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165-304.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 649.

THE WESTERN UNION TELEGRAPH COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED NOVEMBER 13, 1896.

(16,428.)

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1 STATE OF INDIANA: .

In the Supreme Court.

Be it remembered that heretofore, to wit, on the 30th day of December, 1895, the same being the 31st judicial day of the November term, 1895, of said court, the Western Union Telegraph Company, by Chambers, Pickens and Moores, its attorneys, and Brown and Wells, its counsel, filed in the office of the clerk of the supreme court of Indiana a transcript of the record and proceedings of the Marion circuit court, of said State, in a cause wherein The State of Indiana was plaintiff and The Western Union Telegraph Company was defendant, together with the assignment of errors endorsed thereon; which transcript and assignment of errors are in the words and figures following, to wit:

2 Be it remembered, that among the records of proceedings had, papers filed, motions decided, objections stated, rulings made, exceptions noted, judgments rendered, decrees entered, etc., in the circuit court of the county of Marion, State of Indiana, are the following in the cause of—

THE STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

And be it also remembered that heretofore, to wit: on the 7th day of May, A. D. 1894, the above-named plaintiff by its attorneys, the attorney general of Indiana and Messrs. Bailey and Ketcham, filed in the office of the clerk of said circuit court a complaint against said defendant, in the words and figures following, to wit:

STATE OF INDIANA, } *sct:*
Marion County, }

In the Circuit Court of Marion County, May Term, 1894.

THE STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Complaint to Enforce Payment of Taxes.

The State of Indiana, plaintiff, complains of The Western Union Telegraph Company, a corporation organized under and by virtue of the laws of the State of New York, defendant and says that for a long time prior to the first day of April, 1893, and ever since continuously, the defendant has been engaged in transmitting to, from, through, in and across the State of Indiana telegraphic messages, and is, within the true intent and meaning of the statute in such cases made and provided, a telegraph company; that on and subse-

quent to the 1st day of April, 1894, such proceedings were had before the State board of tax commissioners of the State of Indiana, the several county boards of review, within each and every of the counties in the State of Indiana, save and excepting only the counties of Brown, Crawford, Dubois, Harrison, Ohio, Perry, Spencer and Switzerland, within the limits of which counties, eight in number, said defendant owned no property subject to taxation, and before the various township and county assessors in the various townships, that there was assessed against said defendant for the year 1893, taxes in the several counties in the respective amounts named below, after deducting all payments made by said defendant, that is to say:

3	In the county of Adams the sum of	$123.17
	In the county of Bartholomew the sum of	132.44
	In the county of Benton the sum of	313.92
	In the county of Blackford the sum of	115.00
	In the county of Boone the sum of	322.98
	In the county of Carroll the sum of	271.95
	In the county of Clark the sum of	170.89
	In the county of Clay the sum of	203.52
	In the county of Clinton the sum of	439.46
	In the county of Daviess the sum of	164.31
	In the county of Dearborn the sum of	140.08
	In the county of Decatur the sum of	213.69
	In the county of De Kalb the sum of	252.82
	In the county of Delaware the sum of	285.42
	In the county of Elkhart the sum of	347.61
	In the county of Fayette the sum of	136.00
	In the county of Floyd the sum of	00.00
	In the county of Fountain the sum of	462.19
	In the county of Franklin the sum of	131.63
	In the county of Fulton the sum of	256.66
	In the county of Gibson the sum of	160.70
	In the county of Grant the sum of	294.20
	In the county of Greene the sum of	249.83
	In the county of Hamilton the sum of	332.59
	In the county of Hancock the sum of	228.51
	In the county of Hendricks the sum of	288.63
	In the county of Henry the sum of	561.86
	In the county of Howard the sum of	168.09
	In the county of Huntington the sum of	154.96
	In the county of Jackson the sum of	358.78
	In the county of Jasper the sum of	315.28
	In the county of Jay the sum of	148.72
	In the county of Jefferson the sum of	61.13
	In the county of Jennings the sum of	215.14
	In the county of Johnson the sum of	43.15
	In the county of Knox the sum of	293.89
	In the county of Kosciusko the sum of	296.74
	In the county of La Grange the sum of	88.38

In the county of Lake the sum of	$670.72
In the county of La Porte the sum of	1,218.15
In the county of Lawrence the sum of	185.89
In the county of Madison the sum of	391.20
In the county of Marshall the sum of	388.71
In the county of Marion the sum of	313.66
In the county of Martin the sum of	89.58
In the county of Miami the sum of	332.92
In the county of Monroe the sum of	120.83
In the county of Montgomery the sum of	435.19
In the county of Morgan the sum of	127.30
In the county of Newton the sum of	234.75
In the county of Noble the sum of	235.10
In the county of Orange the sum of	118.58
In the county of Owen the sum of	150.99
In the county of Parke the sum of	291.54
In the county of Pike the sum of	47.65
In the county of Porter the sum of	558.57
In the county of Posey the sum of	307.38
4 In the county of Pulaski the sum of	154.02
In the county of Putnam the sum of	221.97
In the county of Randolph the sum of	233.44
In the county of Ripley the sum of	62.11
In the county of Rush the sum of	298.87
In the county of St. Joseph the sum of	681.83
In the county of Scott the sum of	70.75
In the county of Shelby the sum of	189.13
In the county of Starke the sum of	265.49
In the county of Steuben the sum of	152.75
In the county of Sullivan the sum of	241.15
In the county of Tippecanoe the sum of	850.35
In the county of Tipton the sum of	144.55
In the county of Union the sum of	70.96
In the county of Vanderburgh the sum of	249.92
In the county of Vermillion the sum of	117.47
In the county of Vigo the sum of	113.34
In the county of Wabash the sum of	366.58
In the county of Warren the sum of	249.35
In the county of Warrick the sum of	24.27
In the county of Washington the sum of	103.82
In the county of Wayne the sum of	427.30
In the county of Wells the sum of	213.01
In the county of White the sum of	239.88
In the county of Whitley the sum of	219.87
The total taxes so assessed against the defendant, exclusive of penalties but after deducting all payments made, in the several counties of the State amounting in the aggregate to	$20,925.21

That thereafter and subsequent to the levying and assessment of said taxes in the said several counties within the State, the same were in their respective counties, by the several auditors thereof, duly extended upon the proper tax duplicates, and the duplicates with the taxes so extended delivered by the respective auditors of said several counties on or about the 1st day of January, 1894, to the several treasurers of such counties for proceedings thereon, as required by law, and such duplicates were thenceforth continuously in the hands of such county treasurers until and since the third Monday in April, 1894, and it then and there was and thereby became the duty of the defendant to pay to the treasurers of said several counties the amounts so respectively levied and assessed against it for State, county and other purposes, as hereinbefore set forth, but the defendant, wholly unmindful of its duty in the premises, failed, neglected and refused to pay to said several county treasurers, or either or any of them, the taxes so levied and assessed against it in either, any or all of said counties, and also failed, neglected and refused to pay to said county treasurers, or either or any of them, the first installment thereof, as by the statutes in such cases made and provided they were at liberty to do, by reason whereof the whole of said taxes so levied and assessed against said defendant in each and every of the above-named counties became and were delinquent, and the penalty of 10 per cent., by reason of such delinquencies, became and was attached to the taxes so levied and assessed, and the same is now due and owing.

5 Plaintiff further avers that although the defendant has been often thereto requested, it has wholly failed, neglected and refused to pay said taxes so levied and assessed, or any part or parcel thereof, and the same now still remain due and uncollected, whereby a right of action has accrued to this plaintiff to have and recover of the defendant the full amount of said taxes, interest and said delinquent penalty of 10 per cent., together with the penalty of 50 per centum thereon as provided by the statute in relation thereto.

Plaintiff further avers that although said defendant owns and controls within the State of Indiana a large amount of property, real and personal, and although it is daily in the receipt of a large income derived from the carrying on of its business, and is abundantly solvent and able to pay the said taxes so levied and assessed against it, and although it has always refused, as aforesaid, and still fails and refuses to pay the said taxes so levied and assessed against it, yet its property, business, assets and incomes are of such a quasi-public character that the public interests may be jeopardized and interfered with in the event that the property owned and operated by it should be levied upon either by a sheriff or by the county treasurers, and the property so levied upon exposed to sale at either a sheriff's or treasurer's sale by reason of the possible interruption of its duties as a common carrier, and the sale of property necessary to its operation as such common carrier and in the discharge of the duties owing by it to the public, to this plaintiff and the Government of the United States, and it has therefore become and is neces-

sary that a receiver should be appointed upon the final hearing of this cause to take possession of the property owned, controlled and operated by said defendant within the State of Indiana, and to carry on the business of a telegraph company pending the collection of the amount so due to this plaintiff, and out of the receipts and income arising from the operation of said business, after defraying the operating expenses, to apply the surplus to the payment and discharge of the amounts so due on account of said taxes, and the penalties properly due from and chargeable against said defendant until the whole amount shall have been paid.

Wherefore plaintiff prays judgment against said defendant for the sum of ($75,000.00) seventy-five thousand dollars, for the appointment of a receiver to take possession and charge of the property, business and assets of said defendant within the State of Indiana, and to carry on said business under the direction of this court, applying the income and receipts arising therefrom to the payment of the operating expenses, and of the amount so due on account of said taxes and the penalties thereon until the same shall have been fully paid and discharged, and plaintiff prays for all further and proper relief.

ALONZO GREENE SMITH,
Att'y Gen'l.

LEON O. BAILEY,
WM. A. KETCHAM,
Of Counsel.

6 The complaint endorsed:

"The clerk will issue process against the defendant, returnable on the 18th day of May, 1894, being the 11th judicial day of the May term of the circuit court of Marion county, Indiana, for the year 1894, at which time the said defendant is required to appear and answer the within complaint."

ALONZO GREENE SMITH,
Attorney for the Plaintiff et al."

And afterwards, to wit, on the 7th day of January, 1895, being the first judicial day of the January term, 1895, of said court, before the Honorable Edgar A. Brown, sole judge of Marion circuit court, the following proceeding was had, that is to say:

"Comes now the plaintiff by counsel, and on its motion the defendant is ruled to answer the complaint herein by the 12th day of January, A. D. 1895."

And afterwards, to wit, on the 12th day of January, 1895, being the 6th judicial day of the January term of said court before the same honorable judge, the following proceedings were had herein:

"Comes now the defendant by counsel and files its answer to the complaint herein and the plaintiff is ruled to reply thereto by the 15th day of January, 1895."

Said answer is in the words and figures following, viz:

In the Marion Circuit Court.

STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Answer.

The defendant, The Western Union Telegraph Company, for answer to the complaint of The State of Indiana, plaintiff herein, says:

That it admits that it is a corporation organized under and by virtue of the laws of the State of New York, and that for a long time prior to the first day of April, 1893, and ever since continuously, it has been engaged in transmitting to, from, through, in and across the State of Indiana telegraphic messages, and that on said first day of April, 1893, it owned property in all the counties of the State of Indiana, except the counties of Brown, Crawford, Dubois, Harrison, Ohio, Perry, Spencer and Switzerland;

7 That it admits that the amounts alleged in the complaint to have been placed by the respective county auditors of the respective counties upon the respective tax duplicates of said counties as taxes for the year 1893 against the defendant were placed upon the respective tax duplicates of the respective counties by the respective county auditors as taxes for the year 1893 against it, as alleged in the complaint; and that the said duplicates containing the amounts so charged as taxes against defendant were delivered by the respective county auditors to the respective county treasurers on or about the first day of January, 1894;

That between the first day of April, 1893, and the first day of June, 1893, the defendant filled out and delivered to the township assessors of each township of the State of Indiana in which there was located on the first day of April, 1893, any property belonging to the defendant, an itemized list of all said property located in each township, and a statement of the value of each parcel of the same, sworn to by John F. Wallick, the district superintendent of the defendant, who was familiar with said property and its value, said list in all its respects conforming to the requirements of the statutes of Indiana relating to the listing of property by tax-payers;

That certain of said lists and valuations were changed and increased by the county boards of review of certain of the counties above mentioned, at their sessions in August, 1893;

That the defendant, prior to the third Monday of April, 1894, when the first installment of taxes became due, paid to the respective county treasurers of each of the eighty-four counties mentioned in the complaint herein, in which property of the defendant was located on the first day of April, 1893, the amounts claimed to be due as taxes on all the property of the defendant situated in each of the counties respectively which the respective county treasurers claimed was subject to local taxation; and as respects the property purported to be assessed by the State board of tax commissioners at

its session in 1893, the defendant paid to said respective county treasurers the amounts due as taxes reckoned upon the valuation stated in the lists filed by the defendant with the said respective county treasurers as changed by the proper assessing officers and county boards of review, which said amounts were received by the respective county treasurers of the respective counties on account of the taxes for the year 1893, which said amounts the defendant admits were justly due from it as taxes for the year 1893, said amounts so paid aggregating about $12,000;

That the aggregate of the amounts so paid by the defendant as taxes for the years 1892 and 1893 were substantially the same;

That there was no material change in the character of defendant's property in Indiana or in the conditions affecting its value between April 1, 1892, and April 1, 1893; nor during said period
8 was there more than a very slight increase in the amount of said property, to wit, an increase in amount of, to wit, 5 per cent.;

That defendant is and for many years last past has been the owner of a large amount and number of telegraph poles, lines, wires, cables, fixtures, instruments, machinery, appliances, apparatus and real estate, constituting a plant for the transmission and conveyance of telegraphic messages, which said telegraphic plant extends into and through every State and Territory of the United States, the Dominion of Canada and under the Atlantic ocean to England and to Cuba;

That defendant is also engaged in carrying on the business of receiving, transmitting and delivering telegraphic messages for hire, for the public generally, and for the Government of the United States, by requirement of law, using and occupying for the purpose of such business said telegraphic plant;

That defendant has entered into contracts with a great number of persons and corporations in the United States and throughout the world for the purpose of enabling it to economically construct and maintain its said telegraphic plant, which said contracts are now outstanding;

That defendant has also entered into contracts with various persons and corporations in the United States and throughout the world for the purpose of enabling it to carry on its business economically, and for the benefit of the public and of itself, which said contracts are now outstanding;

That defendant has further entered into contracts with various persons and corporations in the United States and throughout the world, whereby defendant is enabled to receive messages designed to be transmitted to points beyond its own lines and upon lines of other telegraph, telephone and cable companies in this country and in many foreign countries, which said contracts are still outstanding;

That partly by reason of the aforesaid contract rights as well as by reason of its possession, ownership and exercise of valuable patents issued by the Government of the United States, and of valuable franchises created by the governments of New York and other States of the United States, but not of Indiana, and by the governments

of England, of Cuba, and of numerous municipalities in such States, defendant is enabled to do a large and profitable business, by and by means of said telegraphic plant, and not only earn an amount which would be equivalent to rent upon said property, in case the same was owned by another corporation or leased by defendant, but also to make a profit for defendant in addition to said amount so applicable as rent of such telegraphic plant;

9 That a part of defendant's said telegraphic plant is situate within the State of Indiana, and that said portion of said telegraphic plant situated within the said State of Indiana, is of the actual cash value of $686,126.70, the said cash value being ascertained by taking the cost of original construction as nearly as the same can be ascertained and deducting therefrom a sum partially equal to the depreciation of said plant; and could be replaced by an entirely new plant of the same extent and location, and constructed of far more valuable and lasting material, for the sum of $1,226,625.78;

That prior to January 1, 1893, the said plant of defendant in the State of Indiana, was, by the statutes of Indiana, assessable in the same manner as property of other tax-payers, except that by a pretended statute of Indiana, approved March 6, 1891, which said pretended statute appears among the printed statutes of the State of Indiana, as section 69, page 99, of the Acts of 1891, a copy of which is hereto annexed, marked "Exhibit A," an income tax of one per cent. of the gross earnings of defendant in Indiana, whether from business originating and ending wholly within the State or from interstate business, was pretended to be imposed upon said income of defendant;

That prior to January 1, 1893, the said telegraphic plant of defendant in Indiana, was assessed in the same manner as the property of other tax-payers, upon tax-lists rendered by the defendant, for the purpose of said taxation, to the proper officers as required by law, showing the amount and value of its property in each county and township, excepting only that prior to January 1, 1893, the said telegraphic plant was attempted to be assessed differently from property of all other tax-payers in Indiana, in the following respect, to wit:

That the State of Indiana, by its auditor, claimed from defendant payment of said income tax, and that defendant, not admitting the legality of said tax, nor waiving its rights to have said statute declared unconstitutional and void, did, in the years 1891 and 1892, pay the State of Indiana a sum equal to one per cent. of its gross earnings from the business done by defendant within the State of Indiana, originating and wholly within the State;

10 That a session of the legislature of the State of Indiana was duly held, in pursuance of the provisions of the constitution of Indiana, in the year 1893, which said session began by the terms of the constitution on Thursday, January 5, 1893, and expired by the terms of said constitution on Monday, March 6, 1893;

That on February 2, 1893, a bill entitled "A bill for an act sup-

plemental to and amendatory of an act entitled 'An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency,' approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight, joint stock associations, companies, copartnerships and corporations transacting business in the State of Indiana, repealing sections 68, 69, 70 and 71 of said act, and all laws in conflict therewith and declaring an emergency," which said bill is the same as the pretended statute of Indiana published by the authority of the State of Indiana as chapter 171 of the Acts of 1893 (such changes as appear by comparison of said bill and said act being such changes as were caused by the pretended amendments to said bill, and having reference to certain actions by the State of Indiana, which up to this time have not been taken or attempted to be taken, and hence not being involved in this litigation, for which reason said changes are immaterial to be herein described and set forth), was duly introduced in the house of representatives of the State of Indiana, the same being known and designated as house bill No. 431;

That said house bill No. 431 was duly passed by said house of representatives on February 24, 1893, and on said day transmitted to the senate of said State;

That the senate of Indiana did not pass said bill either in its original form or in an amended form prior to Saturday, March 4, 1893, at midnight, which said day was the last day upon which either house of the legislature of Indiana could constitutionally take action upon any bill pending before it excepting a bill which might theretofore have been presented to the governor for his approval;

That on Monday, March 6, 1893, the Hon. Claude Matthews, governor of Indiana, transmitted to the senate of Indiana, a message in the words and figures following:

11 "To the honorable the president of the senate:

"I desire to respectfully call the attention of the senate to two bills now pending before your honorable body. I refer to engrossed house bill No. 431, known as the sleeping car bill, and engrossed house bill No. 449, known as the general tax bill. These measures were carefully prepared by the State board of tax commissioners, and I am therefore conversant with their provisions. They are of the highest importance to the tax-payers of the State and have been drafted in a spirit of absolute fairness to all interests concerned and with the greatest regard for the decisions of the supreme court of this and other States. It is estimated one of these bills alone would probably add $25,000,000 worth of property to the tax duplicate, and which has heretofore almost, if not entirely, escaped its share of the public burden.

"For the for-going reasons I wish to most respectfully urge the passage of these tax bills without amendment or delay, and as to them suggest, that I am willing to waive my constitutional rights

and will receive and consider them, even if passed on the 6th day of March, 1893.

CLAUDE MATTHEWS, *Governor.*"

That after the receipt of said message on said Monday, March 6, 1893, the senate of Indiana took such action concerning said house bill No. 431 as would have effected the adoption of certain amendments by said senate to said bill and the passage of said bill, as so amended, and the transmission of the same to the house of representatives, if the said senate had in fact had the power or the authority under the constitution of Indiana to take any action whatsoever concerning said bill upon said day;

That afterwards on said Monday, March 6, 1893, the house of representatives of Indiana took such action as would have effected a concurrence of said house in the amendments of said senate and the passage of said amended bill by the house and the enrollment of said bill, if said house of representatives had had any power or authority under the constitution of Indiana to take any action whatsoever concerning said bill upon said day;

That afterwards on said Monday, March 6, 1893, said paper purporting as aforesaid to be enrolled house bill No. 431, was signed by Honorable James B. Curtis as speaker of the house of representatives, and by Honorable Mortimer Nye, as president of the senate;

That afterwards on said Monday, March 6, 1893, said paper purporting to be said enrolled house bill No. 431 was signed by the Honorable Claude Matthews, governor of Indiana;

That afterwards, said paper purporting to be said house enrolled act No. 431, signed as aforesaid, was deposited in the office of the secretary of state of Indiana, and was by said secretary of state caused to be published among the printed statutes of Indiana
12 passed by the legislature at its session in the year 1893, the same appearing as chapter 171 of the Acts of Indiana of 1893, printed by the authority of the State of Indiana;

That copies of said printed acts were duly published and circulated in the several counties of the State of Indiana, by authority of the State of Indiana, and the fact of such publication was announced and authenticated by the proclamation of the Honorable Claude Matthews, governor of Indiana, on May 18, 1893. (A copy of said pretended act is hereto annexed, marked "Exhibit B");

That a journal of the proceedings of the senate and house of representatives of Indiana at its session in the year 1893 was duly kept and published as required by the constitution and statutes of Indiana, and that the foregoing facts with relation to the passage of said pretended statute will appear from an inspection of said journals;

That, though advised by its counsel that said pretended statute is not a law of the State of Indiana, yet, for the purpose of performing all acts which might by possibility be claimed to be necessary for defendant to do in the performance of its equitable duties toward the State of Indiana, defendant not only caused to be prepared, signed, sworn to and filed in accordance with law its assessment-lists, showing its property in the various townships in the State of

Indiana for the purpose of taxation on April 1, 1893, and caused the same to be filed in the same manner and within the same time as other tax payers of Indiana are required to file assessment-lists, but also, not waiving any of the rights to contest the validity and constitutionality of said pretended statute and any assessment thereunder, but reserving to itself such rights, caused to be prepared, signed, sworn to and filed according to the terms of said pretended statute, with the auditor of the State of Indiana, the statement and return required by said pretended statute, verified by its proper officer, a copy of which said statement and return is hereto annexed, marked "Exhibit C;" and also, not waiving any rights to contest the validity and constitutionality of said statute heretofore described as section 69 of chapter 99 of the Acts of 1891, which said statute the said pretended statute of 1893 purports to continue in force, but insisting upon and reserving to itself said rights, duly filed with the auditor of State of Indiana, a statement, verified by its proper officer, showing the amount received by defendant in each county in the State from all the business of defendant originating and ending wholly within the State of Indiana, for the year prior to April 1, 1893, and duly paid to the treasurer of the State of Indiana on the 10th day of June, 1893, the sum of one thousand four hundred and fifty-four and fifty-five hundredths dollars ($1,454.55), the same being equal to 1 per cent. of the gross earnings of defendant in Indiana from business originating and ending wholly within the State of Indiana;

13 The State board of tax commissioners duly held a session as required by the statutes of Indiana, beginning on the 7th day of August, 1893, and ending and expiring on the 15th day of September, 1893;

That on the 25th day of August, 1893, said State board publicly announced and notified defendant that said board had, under the provisions of said pretended statute, assessed the property of the defendant in Indiana, deducting the real estate, structures, machinery and appliances within the State subject to local taxation, at the sum of two million two hundred and ninety-seven thousand six hundred and fifty-two dollars ($2,297,652.00) and at the rate of three hundred and fifty-seven dollars per mile of telegraph line;

That on the 15th day of September, 1893, said State board of tax commissioners duly caused to be recorded as their final action concerning the assessment of the property of defendant the foregoing valuation of two million two hundred and ninety-seven thousand six hundred and fifty-two dollars ($2,297,652.00), and three hundred and fifty-seven dollars ($357.00) per mile of telegraph line upon all the property of defendant in Indiana, excepting real estate, structures, machinery and appliances subject to local taxation, and duly signed said record as the final and absolute action of said board in this respect, and apportioned said valuation between the counties of the State in which the lines of telegraph of defendant are situated, and certified said valuation to John O. Henderson, as auditor of the State of Indiana, in compliance with the provisions of said pre-

tended statute; and adjourned on said September 15th, 1893, *sine die;*

That said board of tax commissioners made and fixed its said assessment and valuation of defendant's said property in Indiana on August 21st, 1893, and in fixing said valuation upon defendant's said property in Indiana acted under and by virtue of the assumed authority of said pretended statute, approved March 6, 1893, and placed upon defendant's said property additional values beyond the true cash value of defendant's said property as measured by the cost of replacement of the same, making reasonable allowances for deterioration, by adding values of defendant's business property and good will, both in and out side of Indiana, and franchises granted by the State of New York, the United States and foreign countries, and in witness thereof caused to be entered upon the official record of said board, required by law to be kept by said board, on said August 21st, 1893, the following statement and certificate:

"In accordance with the requirements of the act of the General Assembly of the State of Indiana, approved March 6, 1893, the State board of tax commissioners, after full consideration, does hereby assess and value telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight joint stock associations, companies, copartnerships, and corporations transacting business in the State of Indiana, which assessment and valuation is as follows, to wit:

14 "Telegraph and telephone companies.

"Assessment and valuation of telegraph and telephone companies in the State of Indiana by the State board of tax commissioners for the year 1893, exclusive of real estate, structures, machinery, fixtures, and appliances subject to local taxation within the State.

	Miles.	Per mile.	Total.
Western Union Telegraph Co....	6,436.00	$357	$2,297,652 00
Postal Telegraph Cable Co.....	711.11	175	124,444 25
Grand Rapids & Indiana R. R. Telegraph Company	106.22	75	7,966 50
Cincinnati, Richmond and Ft. Wayne R. R. Telegraph Co....	85.78	75	6,433 50
Cumberland Telephone and Telegraph Co.....	69.00	100	6,900 00
Ohio Valley Telephone Co.....	130.00	75	9,750 00
Central Union Telephone Co.....	2,041.25	250	510,312 50
Greensburg Telephone Co.....	109.00	50	5,450 00
Total.....			$2,968,908 75"

That the State board of tax commissioners, during its said session in the year 1893, did not attempt to specify or describe the property of defendant falling within the description of real estate, structures, machinery and appliances subject to local taxations;

That in making said assessment said State board of tax commissioners assumed to take as the basis thereof the value of the entire capital stock of defendant at a valuation per share based upon the price of the shares of defendant's capital stock dealt in in the stock-exchange market of New York city, dividing such aggregate value by the total number of miles of telegraph line of defendant wherever situated and both in and out side of Indiana, and thereby obtaining a pretended valuation per mile of the telegraph line of defendant, amounting to the sum of three hundred and fifty-seven dollars ($357.00) per mile, which said pretended valuation per mile said board, acting under the authority of said pretended statute, imputed to and imposed upon each mile and the whole number of miles of defendant's telegraph line in Indiana, thereby imputing to and imposing upon the whole telegraph line of defendant in Indiana, which is of the length of six thousand four hundred and thirty-six (6,436) miles, said pretended valuation of two million two hundred and ninety-seven thousand six hundred and fifty-two dollars ($2,297,652.00), which said pretended valuation is grossly excessive and far beyond the true cash value of defendant's said property in Indiana;

That said board of tax commissioners, in reaching said valuation of defendant's said property in Indiana, did not consider and assess the value of the property of defendant situated in Indiana otherwise than by pursuing the requirements of said pretended statute;

That neither on the 1st day of April, 1893, nor at any time prior or subsequent thereto, was there any market value for all the shares of the capital stock of defendant;

That the total number of shares of defendant's capital stock which were sold or speculated in on said 1st day of April, 1893, on the New York stock exchange, was one thousand one hundred and sixty-eight (1,168) shares, whereas defendant on said date had and still has outstanding nine hundred and forty-eight thousand two hundred (948,200) shares, each of said shares being of the par value of one hundred dollars ($100.00);

That the average price per share at which said one thousand one hundred and sixty-eight (1,168) shares of the capital stock of defendant were so sold and purchased, or pretended to be sold or purchased, on the New York stock exchange on April 1, 1893, was ninety-four dollars and fifty cents ($94.50); and that of the aforesaid one thousand one hundred and sixty-eight (1,168) shares only a small number were actually delivered by the sellers to the purchasers, the remaining transactions having cancelled each other through the clearing-house of the New York stock exchange without the delivery or transfer of any shares;

That neither on said 1st day of April, 1893, nor on any other day was it possible to sell all the shares of stock of defendant for said price, or for any price approximating thereto, whether such price

was the real value of the shares or not; and that there is not, and from the nature of the case cannot be, any market price for all the shares of the stock of defendant;

That whether the price paid as aforesaid for said shares sold and speculated in as aforesaid on April 1, 1893, was the fair actual value of the shares sold, it is impossible for defendant to state, by reason of the fact that the stock-exchange prices for the shares of defendant's stock, whether upon actual or speculative sales, do not fairly represent the actual value of defendant's property; but, on the contrary, are largely influenced by speculation based upon elements entirely outside of defendant's property, earnings or future prospects, such as: Upon the state of national politics, upon the national financial policy and the certainty or uncertainty of what that policy may be in the future; upon the amount of shipments of gold abroad or the importations of gold; upon the stringency or ease of the local money market; upon the financial necessities of holders of defendant's stock, even upon rumors of insolvency of prominent financiers who may or may not be holders of defendant's shares; upon rapid declines in the market prices of shares of other companies; upon panicky conditions in financial centers at home and in Europe; upon the formation of pools and cliques to advance or depress the stock-exchange prices of the shares of stock of defendant, or even of the shares of other companies; and upon many other considerations which have no relation to the property or business of defendant, which said dependence of stock-exchange prices of the shares of stock of defendant upon considerations having no relation
16 to defendant's property or business is shown in a marked degree from the circumstances that between January 1, 1893, and May 1, 1893, the stock-exchange prices of the shares of stock of defendant fell from one hundred and one dollars ($101.00) per share to eighty dollars and twenty-five cents ($80.25) per share; and between April 1, 1893, and May 1, 1893, fell from ninety-four dollars and fifty cents ($94.50) per share to eighty dollars and twenty-five cents ($80.25) per share, during which period defendant avers that its said property and business were under substantially the same conditions as they had been for many years theretofore, and still are;

That during the past twelve years defendant has regularly paid a dividend; and that during said period its surplus earnings have not materially altered from year to year; and that during said period there has been a steady increase in value of defendant's tangible property; yet, during said period the stock-exchange prices for the shares of stock of defendant have varied in manner following, to wit:

In the year 1882 from $76.13 to $93.38.
In the year 1883 from 71.75 to 88.25.
In the year 1884 from 49.00 to 78.13.
In the year 1885 from 53.50 to 81.38.
In the year 1886 from 60.50 to 80.50.
In the year 1887 from 67.50 to 81.88.
In the year 1888 from 70.38 to 86.75.

In the year 1889 from 81.63 to 88.75.
In the year 1890 from 71.75 to 87.00.
In the year 1891 from 76.00 to 85.50.
In the year 1892 from 82.00 to 100.38.
In the year 1893 from 67.13 to 101.00.

That any price at which any or all shares of defendant might be sold, by any holder or holders thereof, whether such price be calculated upon any market value or upon actual value, includes, amongst other things, a consideration of franchises of great value owned or exercised by defendant, granted by the State of New York, by the United States, by Canada, by Great Britain, by Cuba, and by other States, countries and municipalities; a consideration of defendant's good will, its past earnings from every source, its probable future earnings from every source, the business ability, enterprise and skill of the present managers of defendant's business, the probable continuance of business ability, enterprise and skill in the future management of defendant's business; the contract and other relations of defendant to powerful railroad, telephone and cable companies; a consideration of the real estate of defendant situated in the city of New York, which is of great value, to wit, of the value of three million five hundred thousand dollars ($3,500,000); and in the city of Chicago, which is of great value, to wit: of the value of one million seven hundred thousand dollars ($1,700,000); and of the real estate of defendant of great value, situated in many other States and countries, none of which is situated in the State of Indiana; as
17 well as the consideration of the actual value of all defendant's telegraph lines, poles, wires, cables, conduits, instruments, appliances, and office furniture, including that which is situated in Indiana and taxable by the State of Indiana;

That in estimating such market or actual value of the shares of the stock of defendant, the values of said intangible franchises, rights, contracts, earnings, business, business ability, enterprise, skill and management and good will, and of all said real and personal estate of defendant are blended so as to render it impossible to separate and distinguish the portions of value applicable to any or each of said elements of value of said shares;

That defendant is the owner of many thousands of miles of telegraph in the States of Massachusetts, New York, Pennsylvania and New Jersey, and in other densely populated portions of the United States, which by reason of density of population, the great amount and extra quality and strength of wire and poles, the necessary use of underground conduits and cables, are of great cost and value, to wit: of the cost and value of two thousand and five hundred dollars ($2,500) per mile on the average, and require great expenditures for the maintenance thereof;

That defendant is the owner of many thousand miles of cable which lie under the high seas, which are of great cost and value, to wit: of the cost and value of three thousand five hundred dollars ($3,500) per mile on the average;

That defendant is the owner of many thousands of miles of lines of telegraph in uninhabited or sparsely inhabited portions of the

United States and Mexico, where there are little or no transportation facilities, which said lines, by reason of the cost of transportation of material and cost of maintenance are of great cost and value;

That all defendant's lines in the State of Indiana are under substantially the same conditions as to the cost of construction and maintenance, and that, by reason of the proximity to supplies of material and the very cheap transportation, defendant is able to and has constructed and maintained and does construct and maintain its said lines of telegraph at the minimum of cost, and that defendant's said telegraph lines in Indiana are of minimum value as compared with the lines of defendant situated elsewhere;

That, by reason of the facts aforesaid, the telegraph lines of defendant located outside of the State of Indiana are to such a large extent more costly and valuable than the telegraph lines of defendant within Indiana, that the average mile of the telegraph line of defendant within Indiana is of the value of to wit: forty (40) per cent. of the value of the average mile of the whole telegraph line of defendant situated outside of the State of Indiana, reckoning such value upon the cost of construction and maintenance and making allowance for deterioration;

18 That a very large portion, to wit: sixty-six (66) per cent. of all the business done by defendant in its conveyance of telegraphic messages as aforesaid is interstate and international business;

That a large portion, to wit: sixty (60) per cent. of all the business done by defendant within the State of Indiana is interstate and international business;

That the average net earnings of a mile of defendant's said telegraph line in Indiana amount to only a part, to wit: sixty (60) per cent. of the net earnings of the average mile of defendant's telegraph line outside of the State of Indiana;

That on —— —, 1867, defendant duly accepted the provisions of the act of Congress of July 24, 1866, (now sections 5263–5269 of the Revised Statutes of the United States);

That all the telegraph lines in the State of Indiana which defendant owns, leases or operates are erected and constructed upon the railroads, streets and other post-roads of the United States;

That by virtue thereof defendant is an agent of the Government of the United States in the transmission of intelligence by electricity from point to point within the State of Indiana, and from or to points without the State of Indiana to or from points within the State of Indiana, for the Government of the United States and for citizens thereof;

That said statute, if the same be a statute of Indiana, and the said assessment and valuation of defendant's said property under the provisions of said statute purported to be made by the State board of tax commissioners as aforesaid, render substantially valueless to defendant its said property in Indiana constructed upon the post-roads of the United States within the State of Indiana, and make it impossible for defendant to perform its functions under said act of Congress, and prevent defendant from performing its obligations to

the United States under said act of Congress, to the great injury of defendant and of the Government of the United States;

That a very large amount of the capital stock of the defendant, to wit: the amount of seven million six hundred and thirty-three thousand two hundred and thirty dollars and twelve cents ($7,633,230.12) is invested in and represented by the capital stock and bonds of other telegraph and telephone corporations, whose telegraph or telephone plants are leased to or operated by defendant, which said telegraph and telephone corporations possess no property in the State of Indiana, and do not own or use any franchise granted by the State of Indiana, and are wholly situated outside of the State of Indiana;

19 That the attempted and pretended valuation of defendant's said property by said State board of tax commissioners in manner aforesaid upon the value of defendant's shares of stock, whether said board pretended to value said property upon a basis which included the consideration or estimation of market value or actual value of the shares of stock of defendant, necessarily includes, and does in fact include, values which are no part of the true cash value of the property of defendant in Indiana, but are imputed and fictitious values distributed to defendant's said property in Indiana as portions of the value of the business, business ability, enterprise and skill of defendant, of the real and personal estate owned and leased by defendant and outside of the State of Indiana, and of defendant's franchises granted by States other than Indiana, and municipalities outside of Indiana, and by the United States and by foreign States and nations, and of the contract relations and other relations existing between defendant and other corporations, all of which said property, things in action and other things and matters of value are beyond the jurisdiction of the State of Indiana, whether for the purpose of taxation or for any other purpose;

That even if the State of Indiana possessed jurisdiction of said property, things in action and things and matters of value outside of Indiana, the State of Indiana possesses no jurisdiction of such portions of said property, things in action and things and matters of value, as are represented and caused by, and represent and cause, the earnings of defendant from its interstate commerce as aforesaid;

That at the same time that the said State board of tax commissioners made and determined upon said valuation of the said property of defendant of three hundred and fifty-seven dollars ($357.00) per mile of telegraph line in Indiana, under the authority of and pursuant to said pretended statute of March 6, 1893, they also made and determined upon the following valuations per mile of line in Indiana of the said property of the following-named telephone and telegraph companies owning lines and doing business in Indiana under the authority of and pursuant to said pretended statute of March 6, 1893, to wit:

Central Union Telephone Company, two hundred and fifty dollars ($250.00) per mile;

Postal Telegraph Cable Company, one hundred and seventy-five dollars ($175.00) per mile;

Cumberland Telegraph and Telephone Company, one hundred dollars ($100.00) per mile;

Grand Rapids & Indiana Railroad Telegraph Company, seventy-five dollars ($75.00) per mile;

Ohio Valley Telephone Company, seventy-five dollars ($75.00) per mile;

Cincinnati, Richmond & Ft. Wayne Railroad Telegraph Company, seventy-five dollars ($75.00) per mile;

Greensburg Telephone Company, fifty dollars ($50.00) per mile;

That all said companies are under substantially the same conditions with defendant with respect to cost of construction and maintenance of said telegraph property, and that all of said property upon the valuation based upon the cost of construction and maintenance, and making allowance for deterioration, is worth from fifty dollars ($50.00) to one hundred and ten dollars ($110.00) per mile of line, according to the quality and amount of material used in the construction thereof, and making reasonable allowance for deterioration;

That any value above the sum of one hundred and ten dollars ($110) per mile of line, placed upon any of said property, must have been, and in fact was, by said State board of tax commissioners, placed upon said property by reason of the fact that the companies owning said telegraph and telephone property are, at the present time, by reason of the business enterprise and ability of the managers of the business done upon and by means of all the telegraph and other property of said companies, and their allied and connected properties outside of Indiana, able to cause said companies to earn annually from their said business a greater amount than they would be obliged to pay as rent for all said property, were the same owned by persons or corporations other than themselves, which said valuations are, as compared with the valuation placed upon the property of other tax-payers in Indiana, unjust and not uniform or equal;

That John O. Henderson, auditor of the State of Indiana, in pursuance of said alleged and pretented statute, did, on said September 15, 1893, immediately subsequent to said adjournment of said State board of tax commissioners, certify said valuations to the respective county auditors of the respective counties as above mentioned, as being the counties through, across, into or over which the telegraph lines of the defendant extend;

That the telegraph lines of defendant extend through, across, into and over the said counties of Indiana;

That the said county auditors prior to January 1, 1893, apportioned and distributed said valuations so certified to them respectively by said John O. Henderson, as auditor of State, among the several townships in their respective counties, as provided by said alleged and pretended statute, and placed said valuations upon the tax duplicates of their respective counties as valuations chargeable upon and against defendant upon its property in Indiana and extended upon said duplicates as taxes against defendant for the year ending April 1, 1893, calculated upon such valuations, and delivered

said tax duplicates to the county treasurers of the said several counties respectively, to the end that said county treasurers might collect of and from defendant for the State of Indiana, for State, county, city, town and school purposes, the said pretended and
21 alleged taxes as aforesaid, assessed upon said valuations as aforesaid; which said alleged and pretended taxes are included in the amount sought to be recovered from the defendant in this action;

That the attempt to charge the defendant with the amount of said alleged taxes and the attempt to collect the same, in this action or in any other manner, is without authority of law, and in violation of law in this, to wit:

First. Because said pretended statute known and designated as chapter 171 of the Acts of 1893, has never been enacted as a statute of the State of Indiana, by reason of the fact that the General Assembly, in attempting to enact said pretended statute, acted in violation of article 5, section 14, of the constitution of the State of Indiana, which provides as follows: "No bill shall be presented to the governor within two days next previous to the final adjournment of the General Assembly," in this, to wit:

1. Said pretended statute, as it existed in the form of house bill No. 431, was passed by the senate and house of representatives of Indiana, and presented to the governor, within two days next previous to the final adjournment of the General Assembly;

Second. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment and valuation of defendant's said property made by the said State board of tax commissioners in compliance with the provisions of said pretended statute, are in violation of article 1, sections 1 and 12 of the constitution of Indiana, and section 1 of the 14th amendment of the Constitution of the United States, in that, by said pretended statute and assessment, defendant is deprived of its property without due process of law, said deprivation without due process of law consisting in this, to wit:

1. Said pretended statute, if the same has been enacted as a statute of the State of Indiana, requires said State board of tax commissioners to disregard cost of construction and real and intrinsic value as determining the value for taxation of defendant's said property in Indiana, and to place upon defendant's said property in Indiana a valuation which includes not only the real value of defendant's said property in Indiana, but also a value in addition to the real value of defendant's said property in Indiana proportioned to the value of defendant's business done upon and by the instrumentality of all of defendant's property; which said requirement of said pretended statute was in fact complied with by the State board
22 of tax commissioners in making the pretended assessment and valuation of said property of defendant in Indiana;

2. Said pretended statute, if the same has been enacted as a statute of the State of Indiana, requires a part of the value of defendant's said business to be added to the value of defendant's said property in Indiana, and thereby requires the said State board of

tax commissioners to assess property of defendant which is wholly outside of the State of Indiana and beyond the jurisdiction of said State; which said requirement of said pretended statute, if the same has been enacted as a statute of the State of Indiana, was in fact complied with by the State board of tax commissioners in making the pretended assessment and valuation of the said property of defendant in Indiana;

3. Said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust and uncertain rule for the taxation of the property of the defendant, since, though it requires a part of the defendant's property in Indiana to be assessed by the State board of tax commissioners, and a part of the local assessing officials, it fails to define the kinds of property of the defendant which are subject to assessment by the State board of tax commissioners and the kinds subject to assessment by the local taxing officials, thus attempting to grant to the State board of tax commissioners and to the local taxing officials powers which are strictly legislative in their character, and which may be exercised from year to year by the State board of tax commissioners and by the local assessing officials in a different and conflicting manner, and permitting the same property of the defendant to be assessed both by the State board of tax commissioners and by the local taxing officials, according as each may from year to year determine what kinds of the property of the defendant fall within its or their assessing jurisdiction;

4. Said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust rule for ascertaining the value of the property of defendant in Indiana other than that subject to local taxation, since, for this purpose, it requires the value of all the property of the defendant to be considered as equal to the aggregate of the market values of the stock and bonds, and distributed to Indiana on a mileage basis, excepting only real estate situated outside of Indiana, at its assessed value; whereas, if said rule is otherwise just and constitutional, it could be made just in this respect only by providing for the deduction of the actual value of all the property of the defendant, wherever situated, which does not directly subserve the operation of the telegraph plant of defendant, considered as a unit, or which is in the form of stocks, bonds, or other securities of corporations other than defendant;

23 Third. Because said statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment and valuation of defendant's said property made by said State board of tax commissioners in compliance with the provisions of said statute, are in violation of section 1 of the 14th amendment to the Constitution of the United States, in that by said pretended statute and assessment defendant is denied the equal protection of the laws in this, to wit:

1. That, by said pretended statute, if the same has been enacted as a statute of the State of Indiana, defendant is denied the protection and privilege accorded to all other persons in Indiana and secured to them by the constitution of Indiana of carrying on business,

both in and out side the State of Indiana, without being obliged to pay to the State of Indiana any portion of the income and profits of said business;

2. That by said pretended assessment and valuation defendant is denied the protection actually granted to certain telegraph and telephone corporations above mentioned of holding and owning telegraph and telephone property by paying taxes upon the value of the said property only, without any addition being made to the value of said property by reason of the business done by the managers of said property and by reason of ownership of or other relation to allied and connected properties outside of Indiana;

3. That said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust and uncertain rule for the taxation of the property of the defendant, since, though it requires a part of the defendant's property in Indiana to be assessed by the State board of tax commissioners and a part by the local assessing officials, it fails to define the kinds of property of the defendant which are subject to assessment by the State board of tax commissioners and the kinds subject to assessment by the local taxing officials, thus attempting to grant to the State board of tax commissioners and to the local taxing officials powers which are strictly legislative in their character, and which may be exercised from year to year by the State board of tax commissioners and by the local assessing officials in a different and conflicting manner, and permitting the same property of the
24 defendant to be assessed both by the State board of tax commissioners and by the local taxing officials, according as each may from year to year determine what kinds of the property of the defendant fall within its or their assessing jurisdiction;

4. That said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust rule for ascertaining the value of the property of defendant in Indiana other than that subject to local taxation, since, for this purpose, it requires the value of all of the property of the defendant to be considered as equal to the aggregate of the market values of the stock and bonds, and distributed to Indiana on a mileage basis, excepting only real estate situated outside of Indiana, at its assessed value; whereas, if said rule is otherwise just and constitutional, it could be made just in this respect only by providing for the deduction of the actual value of all the property of the defendant, wherever situated, which does not directly subserve the operation of the telegraph plant of defendant, considered as a unit, or which is in the form of stocks, bonds, or other securities of corporations other than defendant;

Fourth. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment of defendant's said property, are in violation of article 1, section 10, of the Constitution of the United States, which provides that no State shall, without the consent of Congress, lay any imposts or duties on imports, except what may be absolutely necessary for executing its inspection laws; and that the net produce of

all duties and imposts laid by any State on imports, shall be for the use of the Treasury of the United States, in this, to wit:

1. Said pretended statute, in effect, requires said State board of tax commissioners to treat the above-mentioned values of the things in action and property, real and personal, belonging to defendant, and not situated in or appropriable by the State of Indiana for purposes of taxation or for any other purpose, as though said values were, on said April 1, 1893, imported into the State of Indiana for the purpose of being valued for taxation; and said State board of tax commissioners followed the mandate of said pretended statute, and did, in fact, regard and treat said values as if the same were tangible objects imported into the State of Indiana on April 1, 1893, for the purposes of taxation, and did, in fact, value and assess such fictitious imports imputed to defendant for the purpose of taxation; and plaintiff is seeking to recover the amount claimed herein as duties and imposts for which defendant is claimed to be chargeable on account of the above-mentioned fictitious imports imputed to defendant; said pretended statute having been enacted, if it ever was enacted, without the consent of Congress, and said duties and imposts pretended to be imposed by said pretended statute on the above-mentioned fictitious imports imputed to defendant, not being absolutely necessary for executing any inspection laws of the
25 State of Indiana; and said statute not providing that the net produce of said duties and imposts laid on said fictitious imports imputed to defendant and other corporations and individuals affected by said statute, shall be for the use of the Treasury of the United States;

Fifth. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment of defendant's said property, are in violation of article 1, section 8, of the Constitution of the United States, in that they interfere with the right of Congress to regulate commerce with foreign nations and among the several States in this, to wit:

1. That said pretended statute, if the same has been enacted as a statute of the State of Indiana, purports to levy a tax on the interstate and international business and commerce carried on by defendant; and that by said pretended assessment a tax is attempted to be assessed upon the interstate and international business and earnings of defendant;

Sixth. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment of defendant's said property, are in violation of section 1 of article 10 of the constitution of Indiana, which provides as follows:

"The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such only, for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law," in this, to wit:

1. That said pretended statute, if the same has been enacted as a

statute of the State of Indiana, does not provide for a uniform and equal rate of assessment and taxation of defendant's property as compared with the property of other tax-payers in Indiana; and by said pretended assessment the said property of defendant in Indiana is assessed at an unequal and an ununiform rate as compared with the rate of assessment of all other tax-payers in Indiana;

2. That said pretended statute, if the same has been enacted as a statute of the State of Indiana, does not prescribe such regulations as secure the just valuation of defendant's property;

3. That said pretended statute, if the same has been enacted as a statute of Indiana, in effect imposes an income tax upon defendant under the guise of imposing an ad valorem tax upon said property of defendant in Indiana;

26 4. That said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust and uncertain rule for the taxation of the property of the defendant, since, though it requires a part of the defendant's property in Indiana to be assessed by the State board of tax commissioners, and a part by the local assessing officials, it fails to define the kinds of property of the defendant which are subject to assessment by the State board of tax commissioners and the kinds subject to assessment by the local taxing officials, thus attempting to grant to the State board of tax commissioners and to the local taxing officials powers which are strictly legislative in their character, and which may be exercised from year to year by the State board of tax commissioners and by the local assessing officials in a different and conflicting manner, and permitting the same property of the defendant to be assessed both by the State board of tax commissioners and by the local taxing officials, according as each may from year to year determine what kinds of the property of the defendant fall within its or their assessing jurisdiction;

5. That said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust rule for ascertaining the value of the property of defendant in Indiana other than that subject to local taxation, since, for this purpose, it requires the value of all of the property of the defendant to be considered as equal to the aggregate of the market values of the stock and bonds, and distributed to Indiana on a mileage basis, excepting only real estate situated outside of Indiana, at its assessed value; whereas if said rule is otherwise just and constitutional, it could be made just in this respect only by providing for the deduction of the actual value of all the property of the defendant, wherever situated, which does not directly subserve the operation of the telegraph plant of the defendant, considered as a unit, or which is in the form of stocks, bonds or other securities of corporations other than defendant;

Seventh. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, is in violation of article 4, section 22, of the constitution of Indiana, which provides as follows: "The General Assembly shall not pass local or special

laws * * * for the assessment and collection of taxes for State, county, township and road purposes," in this, to wit:

1. That it is a law specially legislating concerning and against defendant and relates to the assessment and taxation of defendant's property;

Eighth. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment of defendant's said property, are in violation of article 3, section 1, of the constitution of Indiana, which provides
27 as follows: "The powers of the government are divided into three separate departments; the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided," in this, to wit:

Said pretended statute purports to require the State board of tax commissioness to determine the kind and amount of property of defendant and the other corporations and individuals affected by said statute, which is subject to be taxed as a unit by the State board of tax commissioners having jurisdiction coextensive with the limits of the State, and also determine the kind and amount of personal property falling within the description of structures, machinery, fixtures and appliances owned by the defendant and the other corporations and individuals affected by said pretended statute and subject to local taxation within the State; thereby attempting to depute to the State board of tax commissioners a power strictly legislative in its character, and which under the constitution of Indiana, can be exercised by the General Assembly alone;

Defendant further says that on the 19th day of December, 1893, it brought suit in this court against Thomas Taggart, as auditor of Marion county, Indiana, and all the other county auditors and all the county treasurers of the counties of Indiana in which the defendant owned property, on April 1, 1893, to enjoin the collection of the alleged taxes herein sued for, and that on the 26th day of December, 1893, this court, in rendering its decree denying the injunction prayed for, granted an injunction pending the appeal of the case in the supreme court of Indiana, prohibiting the collection of taxes herein sued for; that such appeal was duly perfected and said injunction is now in force.

And defendant further says that it is abundantly solvent and able to pay the full amount claimed by the plaintiff at any time, and that it is ready and willing to promptly pay the same whenever the same shall have been finally adjudicated to be justly due from the defendant, together with penalties and interest, if penalties and interest shall be adjudicated to be due thereon, but that it is advised by its counsel that, for the reasons above set forth, said alleged taxes, beyond the amounts already paid by the defendant as aforesaid, are illegal and void, and that the defendant is not legally liable to pay the same; wherefore defendant avers that no reason for the appointment of a receiver for the defendant, either on preliminary or final hearing herein, exists, even though it should be adjudi-

cated that the amounts claimed herein are justly due from the defendant.

Wherefore defendant prays judgment for costs.

BUTLER, SNOW & BUTLER,
Attorneys for Defendant.

28 EXHIBIT A.

Acts of Indiana for 1891, *Chapter* 99.

An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency. (Approved March 6, 1891.)

SEC. 69. Any joint stock association or corporation engaged in transmitting to, from, through, or in this State telegraphic messages and incorporated under the laws of any other State, shall be deemed and held to be a telegraph company and every such telegraph company shall annually between the first day of April, and the first day of May, make and deliver to the auditor of State, a statement verified by the oath of the officer, or agent of such company making such report, showing the entire receipts of each agent of such company doing business in this State for the year then next preceding the first day of April for and on account of such company, including its proportion of gross receipts for business done by such company in connection with the lines of other companies: Provided, that nothing herein contained shall release such telegraph companies from the assessment and taxation of their tangible property in this State in the manner that other tangible property is assessed and taxed, such company in making statement of such receipts shall include as such all sums earned or charged of the business for such preceding year, whether actually received or not. Such statement shall contain an abstract of the amount received in each county and the total amount received for all the counties. In case of the failure or refusal of such telegraph company to make such statement before the first day of May, it shall then be the duty of each local agent of such local telegraph company within this State annually between the 1st day of May and the 1st day of June to make out and forward to the auditor of State a similar verified statement of the gross receipts of his agency for the year then next preceding the 1st day of April. When such statement is made such telegraph company shall at the time of making the same pay into the treasury of the State the sum of one dollar on each one hundred dollars of such receipts, and any such telegraph company failing or refusing for more than thirty days after the 1st day of June in each year to render an accurate account of its receipts in the manner above provided, and to pay the required tax thereon shall forfeit one hundred dollars for each additional day such statement and payment shall be delayed, to be recovered by an action in the name of the State of Indiana, on the relation of the auditor of State in any court of competent jurisdiction, and the attorney general shall conduct such prosecution, and such company, corporation or association so failing or refusing shall be prohibited from carrying on said business in this State until such payment is made.

29 EXHIBIT B.

Acts of Indiana for 1893, *Chapter* 171.

(Enrolled act No. 431—House.)

An act supplementary to and amendatory of an act entitled "An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency," approved March 6th, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freig-t, joint stock associations, companies, copartnerships, and corporations transacting business in the State of Indiana, repealing sections 68, 69, 70, and 71 of said act and all laws in conflict therewith, and declaring an emergency. (Approved March 6th, 1893.)

SECTION 1. Be it enacted by the General Assembly of the State of Indiana, That any joint stock association, company, copartnership, or corporation, whether incorporated under the laws of this State or of any other State or of any foreign nation, engaged in transmitting to, from, through, in or across the State of Indiana, telegraphic messages, shall be deemed and held to be a telegraph company, and every such telegraph company shall, annually, between the 1st day of April and the 1st day of June, make out and deliver to the auditor of State a statement verified by the oath of the officer or agent of such company making such statement with reference to the 1st day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding, and if said shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situated outside the State of Indiana
30 and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the dates and amount thereof.

Eighth. (*a.*) The total length of the lines of said association or company.

(*b.*) The total length of so much of their lines as is outside of the State of Indiana.

(*c.*) The length of the lines within each of the counties and townships within the State of Indiana.

SEC. 2. Every telephone company doing business in this State, whether incorporated under the laws of this State or of any other State, or of any foreign nation, shall annually, between the 1st day of April and the 1st day of June, make out and deliver to the auditor of State a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the 1st day of April next preceding, and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situate outside the State of Indiana, and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with dates and amounts thereof.

Eighth. (*a.*) The total length of the lines of said association or company.

(*b.*) The total length of so much of their lines as is outside the State of Indiana.

(*c.*) The length of the lines within each of the counties and townships within the State of Indiana.

31 SEC. 3. Every joint stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other State, or any foreign nation engaged in conveying to, from, through, in or across this State, or any part thereof, money, packages, gold, silver, plate, merchandise, freight or other articles, under any contract, express or implied, with any railroad company, or the managers, lessees, agents or receivers thereof, provided such joint stock association, company, copartnership or corporation is not a railroad company, shall be deemed and held to be an express company within the meaning of this act, and every such express

company shall annually, between the 1st day of April and the 1st day of June, make out and deliver to the auditor of State a statement, verified by the oath of the officer or agent of such association, company, copartnership or corporation making such statement with reference to the first day of April next preceding, showing:

First. The total capital stock or capital of said association, company, copartnership, or corporation.

Second. The number of shares of capital stock issued and outstanding and the par or face value of each share, and, in case no shares of capital stock are issued, in what manner the capital thereof is divided and in what manner such holdings are evidenced.

Third. Its principal place or business.

Fourth. The market value of the said shares of stock on the 1st day of April next preceding, and if such shares have no market value, then the actual value thereof; and in case no shares of stock have been issued, state the market value, or the actual value in case there is no market value, of the capital thereof, and the manner in which the same is divided.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with improvements thereon, owned by said association, company, copartnership or corporation, situate outside the State of Indiana, and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

32 Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (*a.*) The total length of the lines or routes over which such association, company, copartnership or corporation transports such merchandise, freight, or express matter. (*b.*) The total length of such lines or routes as are outside the State of Indiana. (*c.*) The length of such lines or routes within each of the counties and townships within the State of Indiana.

SEC. 4. Every joint stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other State, or of any foreign nation, and conveying to, from, through, in or across this State, or any part thereof, passengers or travelers in palace cars, drawing-room cars, sleeping cars, dining cars or chair cars, under any contract, express or implied, with any railroad company or the managers, lessees, agents or receivers thereof, shall be deemed and held to be a sleeping car company for the purposes of this act; and every such sleeping car company doing business in this State shall, annually, between the 1st day of April and the 1st day of June, make out and deliver to the auditor of State a statement, verified by oath of the officer or agent of such

company making such statement, with reference to the 1st day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the 1st day of April next preceding, and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specified real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situate outside the State of Indiana, and not used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the franchises and amounts thereon.

Eighth. (*a.*) The total length of the main lines of all the railroad companies over which said cars are run.

33 (*b.*) The total length of so much of the main lines of the railroad companies over which said cars are run as is outside the State of Indiana.

(*c.*) The length of the lines of said railroad companies over which said cars are run within each of the counties and townships within the State of Indiana: Provided, that where the railroads, over which said lines are run, have double tracks or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but a single track, and in case the auditor of State shall require it, such statement shall show in detail the number of miles of each or any particular railroad system or division.

SEC. 5. Upon the filing of such statements the auditor of State shall examine them, and each of them, and if he shall deem the same insufficient, or in case that he shall deem that other information is requisite, he shall require such officer to make such other and further statements as said auditor of State may call for. In case of the failure or refusal of any association, company, copartnership or corporation to make out and deliver to the auditor of State any statement or statements required by this act, such association, company, copartnership or corporation shall forfeit and pay to the State of Indiana one hundred dollars ($100) for each additional day such report is delayed beyond the first day of June, to be sued and recovered in any proper form of action, in the name of the State of Indiana, on the relation of the auditor of State, and

such penalty, when collected, shall be paid into the general fund of the State.

SEC. 6. Upon the meeting of the State board of tax commissioners for the purpose of assessing railroad and other property, said auditor of State shall lay such statements, with such information as may have been furnished him, before said board of tax commissioners, who shall thereupon value and assess the property of each association, company, copartnership or corporation in the manner hereinafter set forth, after examining such statements and after ascertaining the value of such properties therefrom, and from such other information as they may have or obtain. For that purpose they may require the agents or officers of said association, company, copartnership or corporation to appear before them with such books, papers or statements as they may require, or they may require additional statements to be made to them, and may compel the attendance of witnesses in case they shall deem it necessary to enable them to ascertain the true cash value of such property.

34 SEC. 7. Said State board of tax commissioners shall first ascertain the true cash value of the entire property owned by said association, company, copartnership or corporation from said statements or otherwise, for that purpose taking the aggregate value of all the shares of capital stock, in case said shares have a market value, and in case they have none, taking the actual value thereof or of the capital of said association, company, copartnership or corporation, in whatever manner the same is divided, in case no shares of capital stock have been issued: Provided, however, that in case the whole or any portion of the property of such association, company, copartnership or corporation shall be incumbered by a mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock or to the value of the capital, in case there shall be no such shares, the aggregate amount of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, copartnership or corporation. Such board of tax commissioners shall, for the purpose of ascertaining the true cash value of the property within the State of Indiana, next ascertain, from such statements or otherwise, the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situated without the State of Indiana and not specifically used in the general business of such associations, companies, copartnerships or corporations, which said assessed values for taxation shall be by said board deducted from the gross value of the property as above ascertained. Said State board of tax commissioners shall next ascertain and assess the true cash value of the property of such associations, companies, copartnerships or corporations within the State of Indiana, by taking the proportion of the whole aggregate value of said associations, companies, copartnerships or corporations, as above ascertained, after deducting the assessed value of such real estate without the State, which the length of the lines of said associations, companies, copartnerships or corporations, in the case of telegraph and tele-

phone companies within the State of Indiana, bears to the total length of the lines thereof; and in the case of palace, drawing-room, sleeping, dining or chair car companies, the proportion shall be the proportion of such aggregate value, after such deductions, which the length of the lines within the State, over which said cars are run, bears to the length of the whole lines over which said cars are run; and in the case of express companies, the proportion shall be the proportion of the whole aggregate value, after such deductions, which the length of the lines or routes within the State of Indiana, bears to the whole length of the lines or routes of such associations, companies, copartnerships or corporations, and such amount so ascertained shall be deemed and held as the entire value of the property of said associations, companies, copartnerships or corporations within the State of Indiana.

From the entire value of the property within the State so ascertained, there shall be deducted by said board the assessed value for taxation of all the real estate, structures, machinery and appliances within the State and subject to local taxation in the counties and townships, as herein described in item No. 5 of sections 1, 2, 3 and 4 of this act, and the residue of such value so ascertained, after deducting therefrom the assessed value of such local properties, shall be by said board assessed to said association.

SEC. 8. Said State board of tax commissioners shall thereupon ascertain the value per mile of the property within the State by dividing the total value, as above ascertained, after deducting the specific properties locally assessed within the State, by the number of miles within the State, and the result shall be deemed and held as the value, per mile, of the property of such association, company, copartnership or corporation within the State of Indiana.

SEC. 9. Said State board of tax commissioners shall thereupon, for the purpose of determining what amount shall be assessed by it to said association, company, copartnership or corporation in each county in the State through, across, into or over which the line of said association, company, copartnership or corporation extends, multiply the value per mile, as above ascertained by the number of miles in each such counties, as reported in said statements, or as otherwise ascertained, and the result thereof shall be, by said board, certified to the auditor of State, who shall thereupon certify the same to the auditors, respectively, of the several counties through, into, over or across which the lines or routes of said association, company, copartnership or corporation extend, and such auditors shall apportion the amount certified for their counties, respectively, among the several townships into, through, over or across which such lines or routes extend, in proportion to the length of the lines in such townships.

SEC. 10. To enable said county auditors to properly apportion the assessments between the several townships, they are authorized to require the agent of said association or company to report to them, respectively, under oath, the length of the lines in each township, and the auditor shall thereupon add to the value, so apportioned, the assessed valuation of the real estate, structures, machinery,

fixtures and appliances situated in any township and extend the taxes thereon upon the duplicates as in other cases.

SEC. 11. In case any such association, company, copartnership or corporation, as named in this supplemental and amendatory act, shall fail or refuse to pay any taxes assessed against it in any county or township in the State, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the State of Indiana by the prosecuting attorneys of the different judicial circuits of the State on the relation of the
36 auditors of the different counties of this State, and the judgment in said action shall include a penalty of 50 per cent. of the amount of taxes so assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over or across which the line or route of any such association, copartnership, company or corporation shall extend, or in any county where such association, company, copartnership or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership or corporation shall have refused to pay the whole of the taxes assessed against the same by said State board of tax commissioners, or in case such association, company, copartnership or corporation shall have refused to pay the taxes, or any portion thereof, assessed to it in any particular county or counties, township or townships, such action may include the whole or any portion of the taxes so unpaid in any county or counties, township or townships, but the attorney general may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions in each separate county or township, or join counties and townships, as he may prefer.

All collections of taxes for or on account of any particular county made in any such suit or suits shall be, by said auditor of State, accounted for as a credit to the respective counties for or on account of which such collections were made by said auditor of State, at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the State; and upon such settlement being made, the treasurers of the several counties shall at their next settlements, enter credits upon the proper duplicates in their offices, and at the next settlement with such county report the amount so received by him in his settlement with the State, and proper entries shall be made with reference thereto: Provided, however, that in any such action the amount of the assessment fixed by said State board of tax commissioners and apportioned to such county, or apportioned by the county auditor to any particular township, shall not be controverted.

37 SEC. 12. Inasmuch as the provisions of this act are intended to take the place of sections 68, 69, 70 and 71 of the act entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved March 6, 1891, such sections and each of them, and all other laws and parts of laws in conflict with this act are hereby repealed: Provided, that all moneys now due the State, or which may become due on

the first day of April, 1893, or at any other time, on account of any assessment or charge made against any of the joint stock associations, persons, companies or corporations on account of per cents on gross or net earnings for the preceding year or years, and all penalties and charges thereon, growing out of any failure to make reports or payments, as now required by the provisions of the aforesaid repealed sections, shall be paid and collected under the provisions of said repealed sections the same as if said sections were not repealed, and any suit brought for the recovery of such money, taxes or penalties, shall be begun under the provisions of said repealed sections and prosecuted to final judgment thereunder, in all respects the same as if said sections were continued in full force; and it is hereby expressly provided that all the rights of the State accrued, or which may accrue, on the first day of April, 1893, on account of receipts for the preceding years are hereby saved from the operation of the aforesaid repealing clause.

SEC. 13. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in force from and after its passage.

EXHIBIT C.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the Western Union Telegraph Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total capital stock. (See page 1 of annexed statement.)

Item 2. Number of shares of capital stock issued and outstanding. (*a.*) Par or face value of each share. (See page 1 of annexed statement.)

Item 3. Principal place of business. (See page 1 of annexed statement.)

Item 4. Market value of shares of stock on the 1st day of April, 1893. (*a.*) If shares have no market value then state actual value thereof. (See page 1 to 4 of annexed statement.)

38 Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation. (See Schedule B, attached to annexed statement.)

Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation situate outside of the State of Indiana, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated. (See Schedule A, attached to the annexed statement.)

Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz: (See pages 10 and 11 of annexed statement.)

Item 8. (*a.*) Total length of the main lines of all the railroad companies over which cars are run. (*b.*) Total length of so much of the main lines of the railroad companies, over which said cars are run, as are outside the State of Indiana. (*c.*) Total length of the lines of said railroad companies, over which said cars are run, within each of the counties and townships in the State of Indiana. (See page 4 of annexed statement; see Schedule B attached to annexed statement and note on page 12 of annexed statement.)

INDIANAPOLIS, *July* 11, 1893.

To the auditor of the State of Indiana:

The Western Union Telegraph Company, a corporation organized under the laws of the State of New York and owning and operating lines of telegraph in the State of Indiana, protesting that the supposed act of March 6, 1893, is invalid and void under the constitution of the State of Indiana and that of the United States, and that it is not obliged by law to make any report thereunder to the auditor of State, respectfully submits the following in compliance with the request of the auditor of State and only out of respect to that officer and the State board of tax commissioners:

On the 1st day of April, 1893, said corporation had its principal place of business at 195 Broadway, New York city, but had a principal office for the State of Indiana at 19 South Meridian street in the city of Indianapolis. Upon that day the total capital stock of the company, issued and then outstanding, was $94,820,000, consisting of 948,200 shares of $100 each, par value.

39 On the 1st day of April, 1893, there was no market value for all the shares of the company's stock. The total number which was sold or speculated in on that day on the New York stock exchange amounts to 1,168 shares, at prices ranging from $94.25 to $94.75 per share. Of these shares dealt in on the New York stock exchange, only a small number were actually delivered by the sellers to the purchasers, the remaining transactions having cancelled each other through the clearing-house of the New York stock exchange without the delivery or transfer of shares. It was impossible on that day or upon any other day since to sell all the shares of the stock of the said company for such prices or any other approximating thereto, whether such price was the real value of the shares or not. There is, and from the nature of the case can be, no market price for all the shares of stock of the company.

Whether the price paid on April 1, 1893, was the fair actual value of the shares sold it is impossible for the company's officers to state. Such stock-exchange prices, whether of speculative or actual sales, do not fairly represent the actual value of the company's property. Such exchange prices are largely influenced by speculation based upon elements entirely outside of the company's property, earnings or future prospects—for instance, upon the state of national politics,

upon the national financial policy and the certainty or uncertainty of what the policy may be in the future, upon the amount of shipments of gold abroad or the importations of gold, upon the stringency or ease of the local money market, upon the financial necessities of holders of the company's stock, even upon rumors of insolvency of prominent financiers who may or may not be holders of the company's shares, upon rapid declines in the market prices of shares of other companies, upon panicky conditions in financial centers at home or in Europe, upon the formation of pools or cliques to advance or depress the stock-exchange prices of these shares or even of other shares, and upon many other considerations which have no relation to the company's business. This is shown in a marked degree from the circumstances that between the first day of January last and the first of May last the stock-exchange prices of the company's shares fell from 101 to 80¼, and even in the month of April fell from 94½ to 80, falling with the same rapidity as they had within several months advanced.

Any movements on the stock exchange of prices, both down and up, were without reference to the value of the company's property or of its future prospects or its present or future business, all of which were stable and have been so for many years. During the past twelve years, in which the company has regularly paid a dividend, and in which its surplus earnings have not materially altered from year to year, in which there was a steady increase in value of the company's actual property, the stock-exchange prices have varied as follows:

40	1882	76⅛ to 94⅜
	1883	71¾ to 88¼
1884		49 to 78⅛
1885		53½ to 81⅜
1886		60½ to 81½
1887		67½ to 81⅞
1888		70⅜ to 86¾
1889		81⅝ to 88¾
1890		71¾ to 87
1891		76 to 85½
1892		82 to 100⅜
1893 to May 1		80¼ to 101

This company declares that any price of the shares, whether market value or actual value, includes, amongst other things, a consideration of the company's franchises owned or exercised by it, granted by the State of New York, by the United States of America, by Canada, by Great Britain, by Cuba, and by other States and countries; a consideration of the company's good will, its probable future earnings, its present management and its prospective management, its contract or other relations to powerful railroad and telephone and cable companies, each and all of very great value to the company, but none of which elements is the subject of taxation by the State of Indiana, as well as a consideration of the actual value of its property, real or personal, including that which is

situated in the State of Indiana and taxable by it; that in estimating such market or actual value of the shares, the value of such real or personal property of the entire system of the company or that situated in the State of Indiana, cannot be distinguished from the value of such intangible franchises, rights, contracts, management and good will, and that any attempt upon the part of the State of Indiana to value the company's entire property, or that which is situated in the State of Indiana, upon the basis of any market or the actual value of the shares, will necessarily include a value of the said franchises, rights, contracts, management and good will, all of which are beyond the jurisdiction of the State, and any taxation thereof by the State of Indiana would be null and void.

The whole length of the lines of this company whether owned, leased or controlled through the ownership of shares of other companies, including those extending into and through Canada, and under the high seas to Cuba and England is 189,576 miles and the length of such lines in the State of Indiana was 6,436.7 miles.

41 This company represents however, that a fair valuation of its property in the State of Indiana, which consists entirely of its telegraph lines and appurtenances cannot be ascertained even approximately by applying the proportion which such mileage of line in Indiana (6,436.7 miles) bears to the entire mileage of the company (189,576 miles) upon a valuation of all the shares of the company's stock whether such valuation be stock-exchange value or the actual value of such shares, because such valuation includes elements of value not existing within the State of Indiana, or not taxable by it as stated aforesaid, and also because the lines of telegraph possessed by this company in and out of the State of Indiana, are not of uniform value per mile and that any valuation of the company's lines in Indiana, upon the basis of a uniform value per mile of all the company's lines would be a great injustice to this company and would result practically in double taxation of the company's property.

The value of the lines of this company within the State of Indiana, if made upon the basis of the actual cost, less depreciation, will not exceed $686,126.70, but if it should be made upon the basis of the cost of reproduction of an entirely new line of the same extent and location, it would be $1,266,625.78.

This is apparent from the following facts: The standard size of poles in Indiana is 25 feet long, costing delivered from 50 cents to $1.20, according to the kind of timber. White cedar largely predominates and costs about $1.20. In cities and towns, poles ranging from 30 to 55 feet in length are used, but the proportion of long poles, compared with those which are 25 feet long, is very small. A fair average cost of poles with fixtures would not exceed $1.60 each. The labor required to set them in the ground and attach the cross-arms thereto will not average more than $1.00 per pole, of which there are 33 to the mile.

The standard size of No. 8 wire weighs 380 pounds to the mile, and costs with freight added 4½ cents per pound, making the cost

per mile of wire equal $17.10. The cost for stringing the wire on poles averages $4.00 per mile. A set of instruments costs $6.50 upon the average.

Upon this basis the full value of the company's plant in Indiana, should it be reconstructed entirely new of the same extent and location, would be as follows:

6,436.7 miles of poles at $85.80 per mile	$542,168 86
32,257.2 miles of wire at $21.10 per mile	682,736 92
Sets of instruments at $6.50 } Office furniture }	26,720 00
Miscellaneous items	15,000 00
	$1,266,625 78

42 This valuation is far in excess of the actual value of the existing plant, considered as property. The existing lines have been largely constructed under contract with the railroad companies for joint use, the telegraph company furnishing the material and the railroad company the labor. As the average life of a telegraph pole is from 12 to 15 years, and a large portion of the line in Indiana is old, requiring replacement in a few years at a high cost, it is apparent that the present plant is not of the value of a new one.

While the cost per mile in the State of Indiana or in any other State can be averaged with substantial accuracy, because the conditions existing there are substantially uniform, no such rule can apply to the company's lines as a whole. Thousands of miles of line lie in cables under the high seas, costing between $3,000 and $4,000 per mile. In the more densely settled portions of the country, like Massachusetts, New York, Pennsylvania and New Jersey, where also the company's main trunk lines are larger, the cost per mile of line is vastly greater than the average cost per mile of line—the company possessing thousands of miles of line there which cost fully $2,500 per mile.

The company also has a large mileage of line laid under ground in conduits, in which the cost is much greater than the average per mile of its system. In the far West of the United States the necessity to transport poles and wires from the East for a great distance adds largely to the cost per mile of line, and many thousands of miles of line have there been built in advance of the railroad and at a great cost for transportation by wagon across the plains and mountains, making the rate there far beyond the average.

Besides the elements of Federal and foreign franchise, contracts, patent rights and business skill entering into the value of the shares of stock as hereinbefore set forth, this company has large investments in bonds and stocks of other corporations, principally telephone companies and local telegraph companies, of an aggregate value of $7,633,230.12, none of which are of corporations of the State of Indiana, and it also has large investments in real estate in New York city and Chicago, and other cities and towns in the United States and Canada, none of which are in Indiana; the cost of which

was $5,013,326.64. as per Schedule A hereto attached. It is impossible to state to what extent this real estate is directly used in the conduct of the business of the company. Each piece of property is in some degree used for the company's business, but it is not all exclusively used for that purpose. The large office buildings in New York city and in Chicago are only partially used for the company's business, the remainder of it being rented to tenants as any other property of that character. The said schedule also sets forth the assessed valuation of each of these pieces so far as the company's books show them. Some of them are exempt from taxation by local law, others are for local reasons assessed much below their actual value.

43 Any apportionment to Indiana of the company's capital stock on the mileage basis will necessarily include the value of such shares, bonds, real estate, franchises, contracts and patent rights, all of which are outside the jurisdiction of the State of Indiana.

As a further proof that the mileage basis does not correctly indicate the value of the company's property in Indiana, the company shows that while the gross receipts from the company's business throughout its entire system average $32.00 per mile of wire, in Indiana the average is $14.00 per mile of wire, and that the net earnings of the entire system average $10.00 per mile of wire, but in Indiana do not exceed $4.00 per mile of wire.

As a further proof to the same end the company shows that if the entire capital of the company be taken at the stock-exchange prices of April 1st last—say 94½ per cent.—and if the apportionment thereof to the State of Indiana upon the mileage basis above set forth be taxed at an average rate of 2 per cent. (which is probably the average rate of taxation in Indiana,) it would require the company to pay a tax in this State of about $60,000.00. As the net earnings of the company from all its business in the State of Indiana, whether from interstate or local traffic, do not exceed the sum of $120,000.00, it appears that a tax upon such mileage basis would equal 50 per cent. of the entire income of the company's property in the State, which is a rate of taxation unheard of, grossly unequal and substantially destructive.

The company further represents that on ——, 1867, it formally accepted the provisions of the act of July 24, 1866, (now sections 5263–5269 of the Revised Statutes of the United States), that all the telegraph lines in the State of Indiana which it owns, leases or operates are erected and constructed upon the railroads, streets and other post-roads of the United States. That by virtue thereof this company is an agent of the Government of the United States in the transmission of intelligence by electricity from point to point within the State of Indiana and from or to points without the State of Indiana, to or from points within the State of Indiana for the Government of the United States and for citizens thereof; that the enforcement of this scheme of taxation provided in the supposed law of the State of Indiana approved March 6, 1893, will substantially destroy the value of the property of this company in

the State of Indiana constructed upon such post-roads and operated by this company in the performance of its functions under the said act of Congress and thereby prevent it from the due performance of its obligation thereunder.

44 Schedule B hereto attached is a statement of the lines, machinery, fixtures and appliances owned by the said company within the State of Indiana, and the location thereof in each county or township. The company has no other real estate or personal property subject to local taxation than set forth in said schedule.

The company has but one mortgage upon the whole or any part of its property, which mortgage was made to secure what are known as the building bonds maturing May 1, 1902, bearing 7 per cent. interest. The amount outstanding is $1,211,000, but there is in the hands of the trustee for its bondholders a sinking fund accumulation paid by the company of $378,515.89. This mortgage is upon the real estate of the company situated at the corner of Broadway and Dey streets, in New York city, and does not cover any other property. The company protesting that by the terms of said pretended statute it is required to report only the mortgages or mortgage bonds, but inasmuch as the auditor of the State of Indiana has requested the company to report its other bonds not secured by mortgage, of courtesy to that officer it states these bonds which are as follows:

1. Sterling bonds due March 1, 1900, rate of interest 6 per cent., amount outstanding $831,060, with a sinking fund in the hands of the trustee of $10,088. There is no mortgage or other security for these bonds, they are simply debentures.

2. Currency bonds due May 1, 1900, interest 7 per cent., amount outstanding, $4,920,000. There is no security for these bonds, they are simply debentures.

3. Collateral trust bonds, due January 1, 1938, rate of interest 5 per cent.; amount outstanding $8,288,000. There is no sinking fund. These bonds have been issued for the purpose of acquiring some securities, to wit: bonds and shares of some of the telegraph companies whose lines have been leased by the Western Union Telegraph Company, at a fixed rental equal to at least six per cent. upon the par of such bonds or shares. The shares and bonds of such leased telegraph companies were in exchange for said collateral trust bonds delivered to the trustee, and are held by it as a security for the collateral trust bonds of this company. Such bonds and shares so acquired by the trustee equal to $8,288,000. None of these bonds and shares have been included among the investments in bonds and stocks of other companies owned by this company hereinbefore mentioned as having an aggregate value of $7,633,230. The lines of said leased companies whose bonds and shares have thus been acquired by the trustee for the collateral trust bondholders are included in the mileage of this company hereinbefore mentioned.

(NOTE.—The requirement mentioned in item 8, (*c*) of section 1, of the tax law of 1893, (item 8, *c*, of the form of annual return),
45 is complied with by the company by "Schedule B" annexed

hereto, in so far as the statute requires information concerning the length of lines in the different counties in the State of Indiana, in which the lines of the company are located. The company will also furnish the State board with information concerning the mileage in the respective townships, if it is desired, but the company submits that it ought to be relieved from its obligation to furnish this latter information to the State board for the reason that the company has, since April 1, 1893, made out township tax-lists covering all its property in each township, and has sent these lists to the county auditor- of the counties in which the townships are situated. These township lists give the length of lines in each township. The State auditor has no duties with respect to townships, his duty being merely to distribute between counties by section 9, of the tax law of 1893, and the county auditors distributing between townships.

To require the company, under the circumstances, to furnish information to the board would be to require it to furnish this information a second time for the purpose of enabling the State auditor to do that which the company has already done for him, viz: to inform the county auditors of the mileage in the townships.)

"SCHEDULE A."

Real Estate of the Western Union Telegraph Company.

Location.	Cost, per ledger.	Assessed value.
Broadway and Dey street, New York	$2,823,039 52	$1,500,000 00
Fifth avenue and Twenty-third street, New York	202,524 74	290,000 00
16 and 18 Broad street, New York	191,518 77	300,000 00
Fifty-fifth street, New York	20,384 43	2,000 00
Chicago	1,500,000 00	165,000 00
Estimated improvements	200,000 00	
Chicago boulevard	2,500 00	590 00
Philadelphia	30,866 67	36,000 00
Sacramento, Cal.	5,500 00	4,700 00
Plaister Cove, C. B.	2,120 91	
Sandy Hook, N. J.	7,349 62	
Highland, N. J.	3,463 00	
Avila, Cal.	173 68	
Cisco, Cal.	60 00	
North Sydney, C. B.	4,040 00	
Petersburg, Pa.	150 00	
Ashe Bay, N. S.	501 50	
White River Junction, Vt.	443 34	
Signal station, Cape Henlopen	750 00	
46		
Cape Canso, N. S.	12,196 23	
Pt. Hastings, C. B.	1,001 65	
Fire Island observatory	3,370 50	
Marine building, Sandy Hook	1,372 08	None.
Total	$5,013,326 64	

"SCHEDULE B."

	Miles of poles.	Miles of copper wire.	Miles of galvanized wire.	Miles of plain wire.	Total miles of wire.	Value of instruments and office furniture.
Adams	34.3	14.2	85.2	.....	99.4	$95
Allen	145.9	107.4	1,075.9	25.6	1,208.9	855
Bartholomew	53.2	.....	295.2	26.5	321.7	210
Benton	93.7	.....	512.9	28.6	541.5	345
Blackford	27.1	.....	74.5	.....	74.5	70
Boone	104.7	.....	316.9	57.4	374.3	240
Carroll	120.2	.....	382.8	.....	382.8	210
Cass	163.7	33.1	608.4	.....	641.5	945
Clark	66.2	24.3	430.1	24.6	479.0	325
Clay	56.4	.....	225.5	31.5	257.0	175
Clinton	128.5	.....	365.6	34.2	399.8	540
Daviess	45.7	.....	211.3	.....	211.3	110
Dearborn	42.5	20.3	265.8	35.5	321.6	240
Decatur	46.6	.....	89.2	20.8	110.0	150
De Kalb	93.5	75.0	633.7	.....	708.7	240
Delaware	64.3	.....	185.5	.....	185.5	330
Elkhart	110.6	75.5	642.8	.....	718.3	630
Fayette	39.0	.....	101.0	30.0	131.0	70
Floyd	12.0	.....	59.8	.....	59.8	155
Fountain	98.4	.....	263.1	.....	263.1	310
Franklin	31.0	.....	21.2	20.3	41.5	75
Fulton	74.8	29.3	190.6	.....	219.9	135
Gibson	49.5	.....	151.0	51.0	202.0	250
Grant	71.7	.....	234.8	.....	234.8	350
Greene	69.0	.....	127.0	.....	127.0	130
Hamilton	81.7	.....	213.1	21.2	234.3	195
Hancock	101.0	.....	454.1	56.0	510.1	155
Hendricks	81.0	.....	395.0	61.8	456.8	180
Henry	146.6	23.6	540.4	41.4	605.4	475
Howard	51.4	13.7	195.1	6.8	215.6	320
Huntington	50.0	18.4	269.5	.....	287.9	335
Jackson	49.7	.....	446.8	39.5	486.3	180
Jasper	68.7	.....	127.7	.....	127.7	115
Jay	34.5	.....	89.0	.....	89.0	120
Jefferson	21.8	6.5	78.4	21.8	106.7	130
Jennings	59.4	37.8	369.4	43.9	451.1	120
Johnson	21.4	.....	299.7	21.4	321.1	105
Knox	78.9	.....	299.7	56.4	356.1	235
Kosciusko	110.4	84.2	425.5	22.0	531.7	250
La Grange	24.0	.....	48.0	.....	48.0	20
Lawrence	53.8	.....	284.1	.....	284.1	105
Lake	270.2	204.7	1,812.3	111.5	2,128.5	605
La Porte	272.0	177.8	1,638.2	84.7	1,900.7	790
Madison	101.8	25.1	322.6	.....	344.7	480
Marion	219.8	.....	1,303.8	115.7	1,419.5	4,595
Marshall	141.1	133.8	930.5	22.1	1,086.4	240
Miami	93.7	0.8	352.9	.....	353.7	400
Martin	19.3	.....	173.7	.....	173.7	40
Monroe	29.2	.....	58.4	.....	58.4	120
Montgomery	122.7	.....	248.5	26.9	275.4	315
Morgan	27.6	.....	55.2	.....	55.2	100

Schedule B—(Continued).

	Miles of poles.	Miles of copper wire.	Miles of galvanized wire.	Miles of plain wire.	Total miles of wire.	Value of instruments and office furniture.
47						
Newton	65.5	.....	131.6	1.5	133.1	160
Noble	59.2	70.5	664.1	.....	734.6	225
Orange	27.5	.....	55.0	.....	55.0	60
Owen	40.5	.....	81.5	.....	81.5	145
Parke	77.2	.....	172.8	1.0	173.8	215
Pike	13.5	.....	54.0	.....	54.0	40
Porter	205.7	243.1	1,419.1	91.7	1,753.9	505
Posey	78.1	.....	142.6	.....	142.6	155
Pulaski	44.2	25.3	293.9	.....	319.2	155
Putnam	81.5	.....	336.3	61.9	398.2	225
Randolph	62.7	.....	204.4	.....	204.4	360
Ripley	30.5	41.8	268.3	30.5	340.6	110
Rush	80.7	.....	153.2	36.6	189.8	210
St. Joseph	192.1	76.5	765.0	49.2	890.7	505
Scott	21.0	9.2	156.4	7.7	173.3	75
Shelby	52.7	.....	125.6	40.2	165.8	130
Starke	78.4	162.2	478.4	17.1	657.7	130
Steuben	39.5	.....	60.5	.....	60.5	45
Sullivan	66.2	.....	149.6	50.4	200.0	110
Tipton	44.6	11.4	147.4	13.5	172.3	185
Tippecanoe	189.9	.....	940.1	57.9	998.0	1,610
Union	16.2	.....	64.8	32.4	97.2	40
Vanderburgh	65.4	.....	233.1	29.0	262.1	655
Vermillion	45.2	.....	135.6	.....	135.6	220
Vigo	77.7	.....	431.2	59.7	490.9	645
Wabash	98.5	16.2	334.5	.....	350.7	320
Warren	62.1	.....	233.5	.....	233.5	130
Warrick	6.0	.....	24.0	.....	24.0	15
Washington	27.6	.....	55.2	.....	55.2	60
Wayne	115.1	27.5	502.0	43.8	573.3	775
Wells	54.7	14.3	127.2	.....	141.5	140
White	65.8	.....	222.0	.....	222.0	285
Whitley	77.0	71.4	560.6	17.2	649.2	170
	6,436.7	1,871.9	28,704.9	1,780.4	32,357.2	$26,720

STATE OF INDIANA, } *ss:*
County of Marion, }

John F. Wallick, district superintendent of the Western Union Telegraph Company, being duly sworn, on oath says that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893, according to his best information and belief.

JOHN F. WALLICK,
District Superintendent.

Subscribed and sworn to before me this 11th day of July, 1893.

JNO. M. BUTLER, JR.,
Notary Public.

[SEAL.]

This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

(Endorsed on the back :) Return of the Western Union Telegraph Co. under house bill No. 431, approved March 6, 1893 *1893.* Filed July 11, 1893. J. O. Henderson, auditor of State.

48 And afterwards, to wit, on the 9th day of May, 1895, being the fourth judicial day of the May term, 1895, of said court, before the same honorable judge, the following proceeding was had herein, viz:

"Comes now the plaintiff by counsel and files its demurrer to the defendant's answer herein, which demurrer is in the words and figures following, that is to say:

STATE OF INDIANA, } ss :
County of Marion, }

THE STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290. Circuit Court. Demurrer.

The plaintiff demurs to the answer herein, and for cause of demurrer shows the court that the same does not state facts sufficient to constitute a defense to said action.

Wherefore, etc.

WILLIAM A. KETCHAM,
Attorney General.

A. G. SMITH,
LEON O. BAILEY,
MERRILL MOORES,
Of Counsel."

And afterwards, to wit, on the 11th day of June, 1895, being the twenty-fourth judicial day of the May term, 1895, of said court before the same honorable judge, the following proceedings were had herein:

"Come now the parties by counsel, and the court being duly advised, sustains the demurrer of the plaintiff to the defendant's answer herein, to which ruling of the court the defendant, at the time excepts.

And the plaintiff is now granted leave to file a supplemental complaint in this cause, and accordingly files the same. Said supplemental complaint is in the words and figures following, that is to say:

STATE OF INDIANA, } ss:
Marion County, }

In the Marion Circuit Court, May Term, 1895.

THE STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

49 The said plaintiff, The State of Indiana, by way of supplemental complaint against the defendant, The Western Union Telegraph Company, says that at and prior to the session of the State board of tax commissioners held in the office of the auditor of State in the year 1894 the defendant did make out and deliver to the auditor of State a statement verified by the oath of the officer of the company making such statement, showing among other things, the real estate, structures, machinery, fixtures, and appliances owned by said defendant and subject to local taxation within the State, and the location and assessed value thereof, and also its total mileage within the State of Indiana and in the various counties thereof; and said State board of tax commissioners being charged with that duty by law, did, at its session in 1894, assess and determine the total value of the property of said company within the State of Indiana exclusive of the real estate, structures, machinery, fixtures, and appliances subject to local taxation, and said board ascertained, determined, and assessed the unit value of the property of said defendant exclusive of the property subject to local taxation at the sum and value of three hundred — fifty-seven ($357.00) dollars per mile, and at that rate assessed to said company in the various counties the number of miles in each county through or into which the line of said defendant ran as follows:

In the county of Adams	34.30	miles.
In the county of Bartholomew	65.80	"
In the county of Benton	93.70	"
In the county of Blackford	27.10	"
In the county of Boone	104.70	"
In the county of Carroll	120.20	"
In the county of Cass	163.20	"
In the county of Clark	66.70	"
In the county of Clay	56.90	"
In the county of Clinton	128.50	"
In the county of Daviess	56.70	"
In the county of Dearborn	42.50	"
In the county of Decatur	53.40	"
In the county of De Kalb	99.10	"
In the county of Delaware	64.50	"
In the county of Elkhart	110.60	"
In the county of Fayette	40	"
In the county of Floyd	12	"
In the county of Fountain	103.40	"
In the county of Franklin	31	"

In the county of Fulton	77.80	miles.
In the county of Gibson	49.70	"
In the county of Grant	72.30	"
In the county of Greene	69	"
In the county of Hamilton	81.70	"
In the county of Hancock	101	"
In the county of Hendricks	81	"
In the county of Henry	146.60	"
In the county of Howard	51.40	"
In the county of Huntington	53	"
In the county of Jackson	79.50	miles.
In the county of Jasper	78.70	"
In the county of Jay	34.50	"
In the county of Jefferson	21.80	"
In the county of Jennings	59.40	"
In the county of Johnson	21.40	"
In the county of Knox	78.90	"
In the county of Kosciusko	110.40	"
In the county of La Grange	24	"
In the county of Lake	271.20	"
In the county of La Porte	272	"
In the county of Lawrence	88.40	"
In the county of Madison	106.50	"
In the county of Marion	209.80	"
In the county of Marshall	141.10	"
In the county of Martin	33.10	"
In the county of Miami	94.50	"
In the county of Monroe	29.20	"
In the county of Montgomery	122.70	"
In the county of Morgan	27.30	"
In the county of Newton	65.50	"
In the county of Noble	53.10	"
In the county of Orange	27.50	"
In the county of Owen	40.50	"
In the county of Parke	77.20	"
In the county of Pike	13.50	"
In the county of Porter	205.70	"
In the county of Posey	78.10	"
In the county of Pulaski	44.20	"
In the county of Putnam	81.50	"
In the county of Randolph	62.70	"
In the county of Ripley	30.50	"
In the county of Rush	80.70	"
In the county of Scott	22.50	"
In the county of Shelby	54.20	"
In the county of Starke	78.40	"
In the county of Steuben	39.50	"
In the county of St. Joseph	192.10	"
In the county of Sullivan	66.20	"
In the county of Tippecanoe	189.90	"
In the county of Tipton	44.60	"

In the county of Union	16.20	miles.
In the county of Vanderburgh	64.30	"
In the county of Vermillion	45.20	"
In the county of Vigo	77.70	"
In the county of Wabash	98.80	"
In the county of Warren	64.10	"
In the county of Warrick	6	"
In the county of Washington	27.60	"
In the county of Wayne	115.10	"
In the county of Wells	55.30	"
In the county of White	65.80	"
In the county of Whitley	77	"

51 Each and all of said assessments being made with reference to the value of three hundred and fifty-seven ($357.00) dollars per mile, as aforesaid. Thereupon after the completion of said assessments and after the same had been certified by said State board of tax commissioners to the auditor of State to be by him certified to the auditors of the various counties in the State of Indiana, the said defendant filed its certain bill of complaint in the United States circuit court within and for the district of Indiana, against John O. Henderson, the then auditor of State, asking that he be enjoined from certifying to the auditors of the several counties of the State the assessments for such several counties so made by the State board of tax commissioners and in said proceedings obtained a temporary restraining order and injunction enjoining, restraining and prohibiting him, the said John O. Henderson, from certifying said assessment to the said several county auditors, and thereupon, although as plaintiff is informed and believed, and as said John O. Henderson was informed and believed, the said United States court had no jurisdiction whatever over the subject-matter of said action because of the fact that with respect to said matter said defendant Henderson represented the State of Indiana and was in that behalf acting for and on behalf of the State, yet in order not to have any complications, said Henderson did, in compliance with said order of said United States circuit court, neglect and refuse to certify to the several auditors the assessments so made of said unit property by said State board of tax commissioners, but that said assessment still remains in full force and effect, and the same has been by the supreme court of this State so adjudicated in a suit brought by said Western Union Telegraph Company against Thomas Taggert, *et al.*, the auditors and treasurers of the several counties of the State, in this court, wherein judgment was rendered in favor of the defendants, from which an appeal was taken to the supreme court of the State, and said judgment was in all respects affirmed. Nevertheless, by reason of said injunction and restraining order of said United States court so granted, the several auditors in the several counties throughout the State into which the lines of the defendant's telegraph extend, were prevented from extending the taxes upon said unit property upon the duplicates which they were by law required to deliver and which they did deliver, on or about

the first day of January, 1895, to the several treasurers in said counties.

Plaintiff further avers that notwithstanding said taxes upon the unit property were not extended at and prior to the delivery of the duplicates by the auditors to the treasurers, the local taxes upon the local property were so extended and the amount and value of each and every mile of the defendant's property throughout
52 the State, and the mileage in each county having been ascertained by the State board of tax commissioners and the rate for taxation in the different counties, townships, and municipalities having been ascertained and levied by the authorities of said counties, townships, cities, towns and other municipalities, the amount of taxes properly chargeable to and payable by said Western Union Telegraph Company in each of the counties is as follows:

In the county of Adams the sum of	$153.86
In the county of Bartholomew the sum of	278.65
In the county of Benton the sum of	494.87
In the county of Blackford the sum of	140.98
In the county of Boone the sum of	494.46
In the county of Carroll the sum of	641.56
In the county of Cass the sum of	775.60
In the county of Clark the sum of	307.26
In the county of Clay the sum of	264.97
In the county of Clinton the sum of	639.82
In the county of Daviess the sum of	281.77
In the county of Dearborn the sum of	201.85
In the county of Decatur the sum of	228.50
In the county of De Kalb the sum of	445.68
In the county of Delaware the sum of	372.41
In the county of Elkhart the sum of	512.50
In the county of Fayette the sum of	166.59
In the county of Floyd the sum of	48.44
In the county of Fountain the sum of	614.97
In the county of Franklin the sum of	165.56
In the county of Fulton the sum of	349.98
In the county of Gibson the sum of	240.66
In the county of Grant the sum of	385.51
In the county of Greene the sum of	352.51
In the county of Hamilton the sum of	404.36
In the county of Hancock the sum of	460.05
In the county of Hendricks the sum of	403.07
In the county of Henry the sum of	744.68
In the county of Howard the sum of	250.37
In the county of Huntington the sum of	237.27
In the county of Jackson the sum of	467.43
In the county of Jasper the sum of	395.16
In the county of Jay the sum of	201.20
In the county of Jefferson the sum of	81.81
In the county of Jennings the sum of	315.00
In the county of Johnson the sum of	108.15

In the county of Knox the sum of	$360.30
In the county of Kosciusko the sum of	452.85
In the county of La Grange the sum of	110.10
In the county of Lake the sum of	1,107.66
In the county of La Porte the sum of	1,293.95
In the county of Lawrence the sum of	400.02
In the county of Madison the sum of	557.70
In the county of Marion the sum of	1,080.78
In the county of Marshall the sum of	621.07
In the county of Martin the sum of	230.94
In the county of Miami the sum of	462.49
In the county of Monroe the sum of	142.67
In the county of Montgomery the sum of	548.98
In the county of Morgan the sum of	169.91
53 In the county of Newton the sum of	322.00
In the county of Noble the sum of	193.90
In the county of Orange the sum of	139.85
In the county of Owen the sum of	178.11
In the county of Parke the sum of	350.19
In the county of Pike the sum of	67.84
In the county of Porter the sum of	956.09
In the county of Posey the sum of	375.15
In the county of Pulaski the sum of	259.41
In the county of Putnam the sum of	327.84
In the county of Randolph the sum of	294.03
In the county of Ripley the sum of	127.24
In the county of Rush the sum of	348.66
In the county of Scott the sum of	120.48
In the county of Shelby the sum of	249.32
In the county of Starke the sum of	501.80
In the county of Steuben the sum of	166.60
In the county of St. Joseph the sum of	849.33
In the county of Sullivan the sum of	307.12
In the county of Tippecanoe the sum of	1,151.39
In the county of Tipton the sum of	193.88
In the county of Union the sum of	100.92
In the county of Vanderburgh the sum of	336.69
In the county of Vermillion the sum of	244.31
In the county of Vigo the sum of	341.00
In the county of Wabash the sum of	493.97
In the county of Warren the sum of	336.89
In the county of Warrick the sum of	28.27
In the county of Washington the sum of	126.13
In the county of Wayne the sum of	577.89
In the county of Wells the sum of	276.16
In the county of White the sum of	328.53
In the county of Whitley the sum of	373.57

the total taxes so due from and payable by said defendant in the several counties of the State amounting in the aggregate to thirty-

one thousand, two hundred and one dollars and seventy-nine cents ($31,201.79).

That such taxes were not extended upon the duplicates in each or any of the counties of the State by reason of the wrongful act of the defendant in procuring the order of injunction against John O. Henderson, auditor of State as aforesaid.

That said defendant did not on or before the first Monday in November, 1894, pay to the treasurers of said several counties named in the original complaint herein the balances so due from the taxes of 1893, and such taxes so levied and assessed for said year remained and continued unpaid and delinquent, and still remain unpaid and delinquent by reason whereof and the statute in such case made and provided, the additional penalty of six per cent. accrued upon the taxes mentioned and set forth in said original complaint.

Plaintiff further says that said defendant did not on or before the third Monday in April, 1895, nor has it at any time since paid to either or any of the treasurers in either or any of the counties named the taxes so levied, assessed and due in said counties, nor did
54 it pay to said treasurers or either or any of them an amount equal to the first installment thereof, but upon the claim and pretense that the acts of the General Assembly of the State of Indiana, and especially the act of 1893 touching the assessment of telegraph companies, was unconstitutional and void, and that the action of the State board of tax commissioners was void and of no effect, refused to pay the whole or any portion of the taxes levied upon the assessment of the State board of tax commissioners, but in order to maintain a standing did offer to pay and did pay to said several treasurers such sums as in its judgment and opinion it was willing to contribute and pay, and after such several payments were so made by it there still remained unpaid and delinquent in said several counties the sums and amounts following, to wit:

In the county of Adams the sum of	$153.86
In the county of Bartholomew the sum of	199.50
In the county of Benton the sum of	333.14
In the county of Blackford the sum of	111.42
In the county of Boone the sum of	341.08
In the county of Carroll the sum of	641.56
In the county of Cass the sum of	775.60
In the county of Clark the sum of	307.26
In the county of Clay the sum of	190.67
In the county of Clinton the sum of	497.13
In the county of Daviess the sum of	212.43
In the county of Dearborn the sum of	201.85
In the county of Decatur the sum of	163.76
In the county of De Kalb the sum of	273.09
In the county of Delaware the sum of	289.06
In the county of Elkhart the sum of	512.50
In the county of Fayette the sum of	128.00
In the county of Floyd the sum of	33.46

	In the county of Fountain the sum of	$490.63
	In the county of Franklin the sum of	165.56
	In the county of Fulton the sum of	259.79
	In the county of Gibson the sum of	178.20
	In the county of Grant the sum of	298.33
	In the county of Greene the sum of	352.21
	In the county of Hamilton the sum of	317.72
	In the county of Hancock the sum of	327.52
	In the county of Hendricks the sum of	276.56
	In the county of Henry the sum of	550.48
	In the county of Howard the sum of	250.37
	In the county of Huntington the sum of	156.97
	In the county of Jackson the sum of	308.06
	In the county of Jasper the sum of	395.16
	In the county of Jay the sum of	159.44
	In the county of Jefferson the sum of	57.83
	In the county of Jennings the sum of	195.78
55	In the county of Johnson the sum of	108.15
	In the county of Knox the sum of	264.42
	In the county of Kosciusko the sum of	274.48
	In the county of La Grange the sum of	110.10
	In the county of Lake the sum of	664.92
	In the county of La Porte the sum of	824.18
	In the county of Lawrence the sum of	303.19
	In the county of Madison the sum of	557.70
	In the county of Marion the sum of	270.85
	In the county of Marshall the sum of	374.00
	In the county of Martin the sum of	85.85
	In the county of Miami the sum of	348.13
	In the county of Monroe the sum of	115.50
	In the county of Montgomery the sum of	441.27
	In the county of Morgan the sum of	137.81
	In the county of Newton the sum of	260.49
	In the county of Noble the sum of	193.90
	In the county of Orange the sum of	112.23
	In the county of Owen the sum of	145.22
	In the county of Parke the sum of	350.19
	In the county of Pike the sum of	67.84
	In the county of Porter the sum of	552.84
	In the county of Posey the sum of	307.85
	In the county of Pulaski the sum of	158.12
	In the county of Putnam the sum of	327.84
	In the county of Randolph the sum of	284.03
	In the county of Ripley the sum of	64.59
	In the county of Rush the sum of	348.66
	In the county of Scott the sum of	74.54
	In the county of Shelby the sum of	190.25
	In the county of Starke the sum of	288.05
	In the county of Steuben the sum of	160.66
	In the county of St. Joseph the sum of	849.33
	In the county of Sullivan the sum of	307.12

In the county of Tippecanoe the sum of	$1,151.39
In the county of Tipton the sum of	142.14
In the county of Union the sum of	68.73
In the county of Vanderburgh the sum of	236.78
In the county of Vermillion the sum of	189.36
In the county of Vigo the sum of	99.60
In the county of Wabash the sum of	363.82
In the county of Warren the sum of	258.67
In the county of Warrick the sum of	16.74
In the county of Washington the sum of	126.13
In the county of Wayne the sum of	404.99
In the county of Wells the sum of	212.67
In the county of White the sum of	328.53
In the county of Whitley the sum of	373.57

56 The amounts so remaining unpaid and delinquent in said several counties wholly exclusive of penalties, but after deducting all payments thereon so made by said defendant aggregating the sum of twenty-four thousand and eight dollars and forty cents ($24,008.40) and the penalties thereon because of the failure of the defendant to pay the first installment thereon when the same was due and payable, to wit, twenty-four hundred dollars and eighty-four cents (2,400.84), accrued as against said defendant, and a right of action has accrued to this plaintiff to have and recover of the defendant the delinquent taxes with penalties thereon, for the year 1893, aggregating twenty-four thousand two hundred and seventy-three dollars and fourteen cents ($24,273.14) and also the delinquent taxes for the year 1894 with the penalties thereon aggregating twenty-six thousand four hundred and nine dollars and twenty-nine cents ($26,409.29), and by reason of the institution and prosecution of the action to recover in addition the penalty of fifty per centum thereon as by the statute in such cases made and provided, the whole amount of such taxes and penalties for both of said years still remaining due and unpaid aggregating the sum of seventy-six thousand and twenty-three dollars and sixty-five cents ($76,023.65).

Plaintiff further avers that although the defendant has been often thereto requested it has wholly failed, neglected and refused to pay said taxes so levied and assessed, or any part or parcel thereof, and the same now still remain due and uncollected.

Plaintiff further avers that although said defendant owns and controls within the State of Indiana a large amount of property, real and personal, and although it is daily in receipt of a large income derived from the carrying on of its business, and is abundantly solvent, and able to pay the said taxes so levied and assessed against it, and although it has always refused as aforesaid, and still refuses to pay the said taxes so levied and assessed against it, yet its property, business, assets and income are of such a quasi-public character that the public interests may be jeopardized and interfered with in the event that the property owned and operated by it should be levied upon either by a sheriff or by the county treasurers, and the property so levied upon exposed to sale at either a sheriff's or

treasurers' sale by reason of the possible interruption of its duties as a common carrier, and the sale of property necessary to its operation as such common carrier and in the discharge of the duties owing by it to the public, to this plaintiff and the Government of the United States, and it has, therefore, become necessary that
57 a receiver should be appointed upon the final hearing of this cause to take possession of the property owned, controlled and operated by said defendant within the State of Indiana, and to carry on the business of a telegraph company pending the collection of the amount so due to this plaintiff and out of the receipts and income arising from the operation of said business, after defraying the operating expenses, to apply the surplus to the payment and discharge of the amounts so due on account of said taxes, and the penalties properly due from and chargeable against said defendant until the whole amount shall have been paid.

Wherefore plaintiff prays judgment against the defendant for the sum of one hundred thousand dollars ($100,000.00), for the appointment of a receiver to take possession and charge of the property, business and assets of said defendant within the State of Indiana, and to carry on said business under the direction of this court, applying the income and receipts arising therefrom to the payment of the operating expenses, and of the amount so due on account of said taxes and the penalties thereon until the same shall have been fully paid and discharged.

And plaintiff prays for such other and further relief as to the court may seem just and equitable in the premises.

W. A. KETCHAM,
Attorney General.

MERRILL MOORES,
For the State.

And afterwards, to wit: on the 15th day of June, 1895, being the 36th judicial day of the May term, 1895, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Comes now the defendant by counsel and files its demurrer to the supplemental complaint herein in the words and figures following, viz:"

STATE OF INDIANA, } ss:
Marion County, }

THE STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290. Circuit Court.

Demurrer to Supplemental Complaint.

The defendant demurs to the supplemental complaint herein, for the reason that it does not state facts sufficient to constitute a cause of action.

BUTLER, SNOW & BUTLER,
Attorneys for Defendant.

58 And afterwards, to wit: on the 22d day of June, 1895, being the 42d judicial day of the May term, 1895, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Come now the parties by counsel, and the court being duly advised in the premises, now overrules the said defendant's demurrer to the supplemental complaint herein; to which ruling of the court the said defendant at the time excepts."

And afterwards, to wit: on the 27th day of June, 1895, being the 46th judicial day of the May term, 1895, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Comes now the defendant, by counsel, and files its answer to the plaintiff's supplemental complaint herein, in the words and figures following, that is to say:"

In the Marion Circuit Court.

STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Answer to Supplemental Complaint.

The defendant for answer to the supplemental complaint herein, adopts and makes a part hereof all the allegations of the answer to the complaint herein not specially relating to the assessment and collection of taxes for the year 1893, except as herein differently alleged:

The defendant further alleges that the State auditor has been enjoined by the circuit court of the United States for the district of Indiana from certifying to the county auditors the valuations of the defendant's property made by the State board of tax commissioners in the year 1894, which injunction is now outstanding, and that by reason of said injunction, there are no taxes on the tax duplicates of any counties now shown to be due from the defendant.

That between the first day of April, 1894, and the first day of June, 1894, the defendant filled out and delivered to the township assessors of each township of the State of Indiana in which there was located on the 1st day of April, 1894, any property belonging to the defendant, an itemized list of all said property located in each township, and a statement of the value of each parcel of the same, sworn to by John F. Wallick, the district superintend-
59 ent of the defendant, who was familiar with said property and its value, said list in all respects conforming to the requirements of the statutes of Indiana relating to the listing of property by tax-payers.

That certain of said lists and valuations were changed and increased by the county boards of review of certain of the counties of Indiana, in which the lines of said defendant are situated, at their session in August, 1894;

That the defendant prior to the third Monday of April, 1895, when the first instaliment of taxes became due, paid to the respective county treasurers of each of the eighty-four counties in which the property of the defendant was situated on the first day of April, 1893, the amounts claimed to be due as taxes on all the property of the defendant situated in each of said counties respectively which the respective county treasurers claimed was subject to local taxation; and as respects the property purported to be assessed by the State board of tax commissioners at its session in 1894, the defendant paid or tendered to said respective treasurers the amounts due as taxes reckoned upon the valuations stated in the lists filed by the defendant with the said respective county treasurers as changed by the proper assessing officers and county boards of review, which said amounts were received by the respective county treasurers of the respective counties on account of the taxes for the year 1894, which said amounts the defendant admits were justly due from it as taxes for the year 1894; said amounts so paid aggregating about $12,000;

That the aggregates of the amounts so paid by the defendant as taxes for the years 1892, 1893 and 1894, were substantially the same;

That there was no material change in the character of the defendant's property in Indiana or in the conditions affecting its value between April 1st, 1893, and April 1st, 1894; nor during said period was there more than a very slight increase in amount of said property, to wit, an increase in amount to wit, five per cent.;

That the actual cash value of the defendant's plant in Indiana on April 1st, 1894, ascertained by taking the cost of original construction as nearly as the same can be ascertained, and deducting therefrom a sum partially equal to the deterioration of the plant, was $708,804.40; and said plant could have been replaced on said date by an entirely new plant of the same extent and location and of far more reliable and lasting material for the sum of $1,340,935.12;

That the defendant duly filed with the auditor of the State of Indiana prior to June 1st, 1894, the statement and return required by said pretended statute, chapter 171, Acts of 1893, a copy of which is hereto annexed marked "Exhibit A;"

60 That the State board of tax commissioners duly held a session as provided by law, in August and September, 1894, and at said session fixed the same valuation per mile upon defendant's property in Indiana as in 1893, to wit: $357.00 per mile, and upon its property in Indiana, being 6,563 miles, a total valuation of $2,342,991.00;

That said State board of tax commissioners at the time of making said pretended valuation of defendant's said property, caused to be entered upon the official record of said board, required by law to be kept by said board, on said August 24, 1894, the following statement and certificate:

"In accordance with the requirements of the act of the General Assembly of the State of Indiana, approved March 6, 1893, the State board of tax commissioners, after full consideration, does hereby

assess and value telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight, joint stock associations, companies, copartnerships and corporations transacting business in the State of Indiana, which assessment and valuation is as follows, to wit:

"Telegraph and telephone companies.

"Assessment and valuation of telegraph and telephone companies in the State of Indiana by the State board of tax commissioners for the year 1894, exclusive of real estate, structures, machinery, fixtures, and appliances subject to local taxation within the State.

	Miles.	Per mile.	Total.
Western Union Telegraph Co....	6,563.00	$357	$2,342,991 00
Postal Telegraph Cable Co.....	678.13	175	118,672 75
Grand Rapids & Indiana R. R. Telegraph Company	106.22	75	7,966 50
Cumberland Telephone and Telegraph Co....	69.00	100	6,900 00
Ohio Valley Telephone Co.....	130.00	75	9,750 00
Central Union Telephone Co.....	2,076.91	250	519,227 50
Greensburg Telephone Co.....	106.00	40	4,240 00
American Telephone and Telegraph Company.....	254.92	500	127,460 00
Cincinnati, Richmond and Ft. Wayne R. R. Telegraph Co....	85.77	75	6,432 75
Total.....	.....	.....	$3,143,640 50"

That at the same time that the State board of tax commis-
61 sioners made and determined upon said valuation of the said property of defendant of three hundred and fifty-seven dollars ($357.00) per mile of telegraph line in Indiana, under the authority of and pursuant to said pretended statute of March 6, 1893, they also made and determined upon the following valuations per mile of line in Indiana of the said property of the following-named telephone and telegraph companies owning lines and doing business in Indiana under the authority of and pursuant to said pretended statute of March 6, 1893, to wit:

American Telephone and Telegraph Company, five hundred dollars ($500.00) per mile;

Western Union Telegraph Company, three hundred and fifty-seven dollars ($357.00) per mile.

Central Union Telephone Company, two hundred and fifty dollars ($250.00) per mile;

Postal Telegraph Cable Company, one hundred and seventy-five dollars ($175.00) per mile;

Cumberland Telephone and Telegraph Company, one hundred dollars ($100.00) per mile;

Grand Rapids & Indiana Railroad Telegraph Company, seventy-five dollars ($75.00) per mile;

Ohio Valley Telephone Company, seventy-five dollars ($75.00) per mile;

Cincinnati, Richmond & Ft. Wayne Railroad Telegraph Company, seventy-five dollars ($75.00) per mile;

Greensburg Telephone and Telegraph Company, forty dollars ($40.00) per mile;

That all said companies are under substantially the same conditions with defendant with respect to cost of construction and maintenance of said telegraph property, and that all of said property upon a valuation based upon cost of construction and maintenance, and making allowance for deterioration, is worth from fifty dollars ($50.00) to two hundred dollars ($200.00) per mile of line, according to the quality and amount of material used in the construction thereof, and making reasonable allowance for deterioration;

That any value above the sum of two hundred dollars ($200.00) per mile of line, placed upon any of said property must have been, and in fact was, by said State board of tax commissioners, placed upon said property by reason of the fact that the companies owning said telegraph and telephone property are, at the present time, by reason of the business enterprise and ability of the managers of the business done upon and by means of all the telegraph and other property of said companies, and their allied and connected properties outside of Indiana, able to cause said companies to earn annually from their said business a greater amount than they would be obliged to pay as rent for all said property, were the same owned by persons or corporations other than themselves, which said valuations are, as compared with the valuations placed upon the property of other tax-payers in Indiana, unjust and not uniform or equal;

62 That, in so acting, the said State board of tax commissioners acted in conformity with the provisions of the said pretended statute, chapter 171, Acts of 1893, and made the valuations and divisions thereof according to the rule prescribed in said pretended statute.

That said valuation included the elements of valuation set out in the answer to the complaint herein; that there was no market value to all the shares of defendant's stock on April 1, 1894, for the reasons stated in the answer to the complaint herein; that the market value of the shares sold on April 1, 1894, or at any other time, is a shifting and uncertain basis of value, for the reasons stated in the answer to the complaint herein; that the stock of defendant between January 1, 1894, and May 1, 1894, varied from $80.87 to $87.50 per share;

That said pretended statute, chapter 171, Acts of 1893, and the assessment and valuation thereunder, is unconstitutional and void for the reasons stated in the answer to the complaint herein;

Defendant further says that upon the appeal to the supreme court of Indiana in the case of Western Union Telegraph Company *vs.*

Taggart, auditor, and others, mentioned in the answer to the complaint herein, and involving the right of the collecting officers of the State of Indiana to collect of the defendant all the taxes mentioned in the complaint herein, the said supreme court, in deciding said appeal, granted an injunction restraining the defendants, as such collecting officers, from collecting the taxes mentioned in complaint therein, which are the same taxes mentioned in the original complaint in this cause, pending the decision of the Supreme Court of the United States on writ of error; that such writ of error was duly perfected and is now pending, and such injunction is now in full force.

Wherefore defendant prays that the plaintiff take nothing by its supplemental complaint herein, and for judgment for costs and for all other proper relief.

BUTLER, SNOW & BUTLER,
Attorneys for Defendant.

63 EXHIBIT A.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the Western Union Telegraph Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total capital stock. (See page 1 of annexed statement.)

Item 2. Number of shares of capital stock issued and outstanding. (*a.*) Par or face value of each share. (See page 1 of annexed statement.)

Item 3. Principal place of business. (See page 1 of annexed statement.)

Item 4. Market value of shares of stock on the 1st day of April, 1893. (*a.*) If shares have no market value then state actual value thereof. (See page 1 to 4 of annexed statement.)

Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation. (See Schedule B, attached to annexed statement.)

Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation situate outside of the State of Indiana, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated. (See Schedule A, attached to the annexed statement.)

Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz: (See pages 10 and 11 of annexed statement.)

Item 8. (*a.*) Total length of the main lines of all the railroad companies over which cars are run. (*b.*) Total length of so much of the main lines of the railroad companies, over which said cars are run, as are outside the State of Indiana. (*c.*) Total length of the lines of said railroad companies, over which said cars are run, within each of the counties and townships in the State of Indiana. (See page 4 of annexed statement; see Schedule B attached to annexed statement and note on page 12 of annexed statement.)

64 INDIANAPOLIS, —— —, ——.

To the auditor of the State of Indiana:

The Western Union Telegraph Company, a corporation duly organized under the laws of the State of New York and owning and operating lines of telegraph in the State of Indiana, protesting that the supposed act of March 6, 1893, is invalid and void under the constitution of Indiana and that of the United States, and that it is not obliged by law to make any report thereunder to the auditor of State, respectfully submits the following in compliance with the request of the auditor of State and only out of respect to that officer and the State board of tax commissioners:

On the 2d day of April, 1894, said corporation had its principal place of business at 195 Broadway, New York city, but had a principal office for the State of Indiana at 19 South Meridian street in the city of Indianapolis. Upon that day the total capital stock of the company, issued and then outstanding, was $94,820,000, consisting of 948,200 shares of $100 each, par value.

On the 2d day of April, 1894, there was no market value for all of the shares of the company's stock. The total number which was sold or speculated in on that day on the New York stock exchange amounts to 9,000 shares, at prices ranging from $84.00 to $85.37 per share. Of these shares dealt in on the New York stock exchange, only a small number were actually delivered by the sellers to the purchasers, the remaining transactions having cancelled each other through the clearing-house of the New York stock exchange without the delivery or transfer of shares. It was impossible on that day or upon any other day since to sell all the shares of the stock of the said company for such prices or any other approximating thereto, whether such price was the real value of the shares or not. There is, and from the nature of the case can be, no market price for all the shares of stock of the company.

Whether the price paid on April 2, 1894, was the fair actual value of the shares sold it is impossible for the company's officers to state. Such stock-exchange prices, whether of speculative or actual sales, do not fairly represent the actual value of the company's property. Such exchange prices are largely influenced by speculation based upon elements entirely outside of the company's property, earnings or future prospects—for instance, upon the state of national politics,

65 upon the national financial policy and the certainty or uncertainty of what that policy may be in the future, upon the amount of shipments of gold abroad or the importations of

gold, upon the stringency or ease of the local money market, upon the financial necessities of the holders of the company's stock, even upon rumors of insolvency of prominent financiers, who may or may not be holders of the company's shares, upon rapid declines in the market prices of shares of other companies, upon panicky conditions in financial centers at home or in Europe, upon the formation of pools or cliques to advance or depress the stock-exchange prices of these shares or even of other shares, and upon many other considerations which have no relation to the company's business. This is shown in a marked degree from the circumstances that between the first day of January, 1893, and the first of May, 1893, the stock-exchange prices of the company's shares fell from 101 to 80¼, and even in the month of April, 1893, fell from 94½ to 80, falling with the same rapidity as they had within several months advanced.

Any movements on the stock exchange of prices, both down and up, were without reference to the value of the company's property or of its future prospects or its present or future business, all of which were stable and have been so for many years. During the past thirteen years, in which the company has regularly paid a dividend, and in which its surplus earnings have not materially altered from year to year, in which there was a steady increase of value of the company's actual property, the stock-exchange prices have varied as follows:

1882	76⅛	to	93⅜
1883	71¾	to	88¼
1884	49	to	78⅝
1885	53½	to	81⅜
1886	60½	to	81½
1887	67½	to	81⅞
1888	70⅜	to	86¾
1889	81⅝	to	88¾
1890	71¾	to	87
1891	76	to	85½
1892	82	to	100⅜
1893	67⅛	to	101
1894 to May 1	80⅞	to	87½

66 This company declares that any price of the shares, whether market value or actual value, includes, amongst other things, a consideration of the company's franchises, owned or exercised by it, granted by the State of New York, by the United States of America, by Canada, by Great Britain, by Cuba, and by other States and countries; a consideration of the company's good will, its probable future earnings, its present management and its prospective management, its contract or other relations to powerful telephone and cable companies, each and all of very great value to the company, but none of which elements is the subject of taxation by the State of Indiana, as well as a consideration of the actual value of the property, real or personal, including that which is situated in the State of Indiana and taxable by it; that in estimating such market

or actual value of the shares, the value of such real or personal property of the entire system of the company or that situated in the State of Indiana, cannot be distinguished from the value of such intangible franchises, rights, contracts, management and good will, and that any attempt upon the part of the State of Indiana to value the company's entire property, or that which is situated in the State of Indiana, upon the basis of any market or the actual value of the shares, will necessarily include a value of such franchises, rights, contracts, management and good will, all of which are beyond the jurisdiction of the State, and any taxation thereof by the State of Indiana would be null and void.

The whole length of the lines of the company whether owned, leased or controlled through the ownership of shares of other companies, including those extending into and through Canada, and under the high seas to Cuba and England is 189,936 miles, and the length of such lines in the State of Indiana, was 6,563 miles.

This company represents however, that a fair valuation of its property in the State of Indiana, which consists entirely of its telegraph lines and appurtenances cannot be ascertained even approximately by applying the proportion which such mileage of line in Indiana (6,563) bears to the entire mileage of the company (189,936) upon a valuation of all the shares of the company's stock whether such valuation be stock-exchange values or the actual value of such shares, because such valuation includes elements of value not existing within the State of Indiana, or not taxable by it as stated aforesaid, and also because the lines of telegraph possessed by this company in and out of the State of Indiana, are not of uniform value per mile and that any valuation of the company's lines in Indiana, upon a basis of a uniform value per mile of all the company's lines would be a great injustice to this company and would result practically in double taxation of the company's property.

67 The value of the lines of the company within the State of Indiana, if made upon the basis of the actual cost, less depreciation, will not exceed $708,804.40, but if it should be made upon the basis of the cost of reproduction of an entirely new line of the same extent and location, it would be $1,340,935.12.

This is apparent from the following facts: The standard size of poles in Indiana is 25 feet long, costing delivered from 50 cents to $1.20, according to the kind of timber. White cedar largely predominates and costs $1.20. In cities and towns, poles ranging from 30 to 55 feet in length are used, but the proportion of long poles, compared with those which are 25 feet long, is very small A fair average cost of poles and fixtures would not exceed $1.60. each. The labor required to set them in the ground and attach the cross-arms thereto will not average more than $1.00 per pole, of which there are thirty-three to the mile.

The standard size of No. 8 wire weighs 380 pounds to the mile, and costs with freight added 4½ cents per pound, making the cost per mile of wire equal $17.10. The cost for stringing the wire on poles averages $4.00 per mile. A set of instruments costs $6.50 upon the average.

Upon this basis the full value of the company's plant in Indiana, should it be reconstructed entirely new of the same extent and location, would be as follows:

6,563 miles of poles at $85.80 per mile	$563,105 40
34,785.2 miles of wire at $21.10 per mile	733,967 72
Sets of instruments at $6.50 } Office furniture }	28,862 00
Miscellaneous items	15,000 00
	$1,340,935 12

This valuation is far in excess of the actual value of the existing plant, considered as property. The existing lines have been largely constructed under contract with the railroad companies for joint use, the telegraph company furnishing the material and the railroad company the labor. As the average life of a telegraph pole is from 12 to 15 years, and a large portion of the line in Indiana is old, requiring replacement in a few years at a high cost, it is apparent that the present plant is not of the value of a new one.

While the cost per mile in the State of Indiana, or in any other State, can be averaged with substantial accuracy, because the conditions existing there are substantially uniform, no such value can apply to the company's lines as a whole. Thousands of
68 miles of line lie in cables under the high seas, costing between $3,000 and $4,000 per mile. In the more densely settled portions of the country, like Massachusetts, New York, Pennsylvania and New Jersey, where also the company's main trunk lines are larger, the cost per mile of line is vastly greater than the average cost per mile of line—the company possessing thousands of miles of line there which cost fully $2,500 per mile.

The company also has a large mileage of line laid under ground in conduits, in which the cost is much greater than the average per mile of its system. In the far West of the United States the necessity to transport poles and wires from the East for a great distance adds largely to the cost per mile of line, and many thousands of miles of line have there been built in advance of the railroad and at a great cost for transportation by wagon across the plains and mountains, making the rate there far beyond the average.

Besides the elements of Federal and foreign franchises, contracts, patent rights and business skill entering into the value of the shares of stock as hereinbefore set forth, this company has large investments in bonds and stocks of other corporations, principally telephone companies and local telegraph companies, of an aggregate value of $7,216,035.79, none of which are of corporations of the State of Indiana, and it also has large investments in real estate in New York city and Chicago, and other cities and towns in the United States and Canada, none of which are in Indiana; the cost of which was $4,979,533.74, as per Schedule A hereto attached. It is impossible to state to what extent this real estate is directly used in the conduct of the business of the company. Each piece of property

is in some degree used for the company's business, but it is not all exclusively used for that purpose. The large office buildings in New York city and in Chicago are only partially used for the company's business, the remainder of it being rented to tenants as any other property of that character. The said schedule also sets forth the assessed valuation of each of these pieces, so far as the company's books show them. Some of them are exempt from taxation by local law, others are for local reasons assessed much below their actual value.

Any apportionment to Indiana of the company's capital stock on the mileage basis will necessarily include the value of such shares, bonds, real estate, franchises, contracts and patent rights, all of which are outside the jurisdiction of the State of Indiana.

As a further proof that the mileage basis does not correctly indicate the value of the company's property in Indiana, the
69 company shows that while the gross receipts from the company's business throughout the entire system average $32.00 per mile of wire, in Indiana the average is $14.00 per mile of wire, and that the net earnings of the entire system average $10.00 per mile of wire, but in Indiana do not exceed $4.00 per mile of wire.

As a further proof to the same end the company shows that if the entire capital of the company be taken at the stock-exchange prices of April 2d last—say 84 per cent.—and if the apportionment thereof to the State of Indiana upon the mileage basis above set forth, be taxed at an average rate of 2 per cent. (which is probably the average rate of taxation in Indiana,) it would require the company to pay a tax in this State of about $55,000.00. As the net earnings of the company from all the business in the State of Indiana, whether from interstate or local traffic, do not exceed the sum of $110,000.00, it appears that a tax upon such mileage basis would equal 50 per cent. of the entire income of the company's property in the State, which is a rate of taxation unheard of, grossly unequal and substantially destructive.

The company further represents that on June 8, 1867, it formally accepted the provisions of the statute of July 24, 1866, (now sections 5263–5269 of the Revised Statutes of the United States), that all the telegraph lines in the State of Indiana which it owns, leases or operates are erected and constructed upon the railroads, streets and other post-roads of the United States. That by virtue thereof this company is an agent of the Government of the United States in the transmission of intelligence by electricity from point to point within the State of Indiana and from or to points without the State of Indiana, to or from points within the State of Indiana for the Government of the United States and citizens thereof; that the enforcement of this scheme of taxation provided in the supposed law of the State of Indiana, approved March 6, 1893, will substantially destroy the value of the property of this company in the State of Indiana constructed upon such post-roads and operated by this company in the performance of its functions under said act of Congress and thereby prevent it from the due performance of its obligations thereunder.

Schedule B attached is a statement of the lines, machinery, fixtures and appliances owned by said company within the State of Indiana, and the location thereof in each county or township. The company has no other real estate or personal property subject to local taxation than set forth in said schedule.

70 The company has but one mortgage upon the whole or any part of its property, which mortgage was made to secure what are known as the building bonds maturing May 1, 1902, bearing 7 per cent. interest. The amount outstanding is $1,182,000, but there is in the hands of the trustee for its bondholders a sinking fund accumulation paid by the company of $108,142.61. This mortgage is upon the real estate of the company situated at the corner of Broadway and Dey streets, in New York city, and does not cover any other property. The company protesting that by the terms of said pretended statute it is required to report only the mortgage or mortgage bonds, but inasmuch as the auditor of the State of Indiana has requested the company to report its other bonds not secured by mortgage, of courtesy to that officer it states these bonds which are as follows:

1. Sterling bonds, due March 1, 1900, rate of interest 6 per cent., amount outstanding $811,134, with a sinking fund in the hands of the trustee of $10,088. There is no mortgage or other security for these bonds; they are simply debentures.

2. Currency bonds, due May 1, 1900, interest 7 per cent.; amount outstanding, $4,920,000. There is no security for these bonds; they are simply debentures.

3. Collateral trust bonds, due January 1, 1938, rate of interest 5 per cent.; amount outstanding $8,352,000. There is no sinking fund. These bonds have been issued for the purpose of acquiring some securities, to wit: bonds and shares of some of the telegraph companies whose lines have been leased by the Western Union Telegraph Company, at a fixed rental equal to at least six per cent. upon the par value of such bonds and shares. The shares and bonds of such leased telegraph companies were in exchange for said collateral trust bonds delivered to the trustee, and are held by it as a security for the collateral trust bonds of this company. Such bonds and shares so acquired by the trustee equal $8,352,000. None of these bonds and shares have been included among the investments in bonds and stocks of other companies owned by this company hereinbefore mentioned as having an aggregate value of $7,216,035.72. The lines of said leased companies whose bonds and shares have thus been acquired by the trustee for the collateral trust bondholders are included in the mileage of this company hereinbefore mentioned.

(NOTE.—The requirements mentioned in item 8, (*c*) of section 1, of the tax law of 1893, (item 8, *c*, of the form of annual return),
71 is complied with by the company by "Schedule B" annexed hereto, in so far as the statute requires information concerning the length of lines in the different counties in the State of Indiana, in which the lines of the company are located. The company will also furnish the State board with information concerning

the mileage in the respective townships, if it is desired, but the company submits that it ought to be relieved from its obligation to furnish this latter information to the State board for the reason that the company has, since April 1, 1894, made out township tax-lists covering all its property in each township, and has sent these lists to the county auditors of the counties in which the townships are situated. These township lists give the length of the lines in each township. The State auditor has no duties with respect to townships, his duty being merely to distribute between counties, by section 9, of the tax law of 1893, and the county auditors distributing between townships.

To require the company, under the circumstances, to furnish this information to the State board would be to require it to furnish this information a second time for the purpose of enabling the State auditor to do that which the company has already done for him, viz: to inform the county auditors of the mileage in the townships.)

"SCHEDULE A."

Real Estate of the Western Union Telegraph Company.

Location.	Cost, per ledger.	Assessed value.
Broadway and Dey street, New York	$2,823,039 52	$1,500,000 00
Fifth avenue and Twenty-third street, New York	202,524 74	290,000 00
16 and 18 Broad street, New York	191,518 77	300,000 00
Fifty-fifth street, New York	20,384 43	2,000 00
Chicago	1,666,207 10	
Chicago boulevard	2,500 00	590 00
Philadelphia	30,866 67	36,000 00
Sacramento, Cal.	5,500 00	4,700 00
Plaister Cove, C. B.	2,120 11	
Sandy Hook, N. J.	7,349 62	None.
Highlands, N. J.	3,463 00	
Avila, Cal.	173 68	
Cisco, Cal.	60 00	
North Sydney, C. B.	4,040 00	
Petersburg, Pa.	150 00	
Ashe Bay, N. S.	501 50	
White River Junction, Vt.	443 34	
Signal station, Cape Henlopen	750 00	
Cape Canso, N. S.	12,196 23	
Pt. Hastings, C. B.	1,001 65	
Fire Island observatory	3,370 50	
Marine building, Sandy Hook	1,372 08	
Total	$4,979,533 74	

72 "EXHIBIT B."

SCHEDULE B.

Miles of Line in Each County, State of Indiana.

Counties.	Miles of poles.	Miles of wire.	Value of instruments and office furniture.
Adams	34.30	142.30	$120
Allen	149.60	1,277.40	654
Bartholomew	65.80	334.20	180
Benton	93.70	568.00	320
Blackford	27.10	74.50	70
Boone	104.70	600.90	230
Carroll	120.20	382.80	255
Cass	163.20	679.80	910
Clark	66.70	468.50	350
Clay	56.90	249.40	205
Clinton	128.50	403.30	420
Crawford, R. R. Co. owns poles		25.50	50
Daviess	56.70	222.30	120
Dearborn	42.50	335.60	230
Decatur	53.40	163.40	150
De Kalb	99.10	779.20	280
Delaware	64.50	186.70	350
Dubois, R. R. Co. owns poles		44.40	100
Elkhart	110.60	760.30	451
Fayette	40.00	131.00	105
Floyd	12.00	59.80	170
Fountain	103.40	263.10	290
Franklin	31.00	41.50	40
Fulton	77.80	321.80	160
Gibson	49.70	229.50	330
Grant	72.30	237.30	385
Greene	69.00	127.00	160
Hamilton	81.70	235.40	180
Hancock	101.00	510.10	150
Harrison, R. R. Co. owns poles		16.90	None.
Hendricks	81.00	480.80	220
Henry	146.60	628.40	300
Howard	51.40	229.40	285
Huntington	53.00	347.50	170

"*Exhibit B*"—Continued.

Counties.	Miles of poles.	Miles of wire.	Value of instruments and office furniture.
Jackson	79.50	516.10	$140
Jasper	68.70	127.70	130
Jay	34.50	89.70	100
Jefferson	21.80	106.70	130
Jennings	59.40	459.70	90
Johnson	21.40	322.10	90
Knox	78.90	353.10	240
Kosciusko	110.40	884.20	355
La Grange	24.00	90.00	60
Lake	271.20	2,459.80	560
La Porte	272.00	1,963.50	807
Lawrence	88.40	325.40	190
Madison	106.50	368.70	570
Marion	209.80	1,438.50	6,990
Marshall	141.10	1,086.40	250
Martin	33.10	187.50	60
Miami	94.50	358.70	390
Monroe	29.20	58.40	150
Montgomery	122.70	276.10	395
Morgan	27.30	54.60	90
Newton	65.50	134.10	150
Noble	53.10	683.60	269
Orange	27.50	55.00	90
Owen	40.50	81.50	130
Parke	77.20	173.80	315
Perry, R. R. Co. owns poles		8.40	30
Pike	13.50	68.80	60
Porter	205.70	1,859.80	415
Posey	78.10	142.60	175
Pulaski	44.20	353.10	120
Putnam	81.50	398.20	210
Randolph	62.70	204.40	340
Ripley	30.50	335.60	110
Rush	80.70	200.30	250
St. Joseph	192.10	970.70	491
Scott	22.50	176.80	70
Shelby	54.20	187.60	140
Spencer, R. R. Co. owns poles		41.20	50
Starke	78.40	720.10	160
Steuben	39.50	102.50	140

"*Exhibit B*"—Continued.

Counties.	Miles of poles.	Miles of wire.	Value of instruments and office furniture.
Sullivan	66.20	200.00	$160
Tippecanoe	189.90	1,025.10	1,190
Tipton	44.60	183.80	220
Union	16.20	97.20	40
Vanderburgh	64.30	286.00	890
Vermillion	45.20	135.60	140
Vigo	77.70	490.90	890
Wabash	98.80	399.90	260
Warren	64.10	235.50	100
Warrick	6.00	46.20	20
Washington	27.60	55.20	40
Wayne	115.10	592.80	500
Wells	55.30	182.80	130
White	65.80	222.00	200
Whitley	77.00	649.20	190
Total	6,563.00	34,785.20	$28,862

STATE OF INDIANA, }
County of Marion, } ss:

John F. Wallick, district superintendent of the Western Union Telegraph Company, being duly sworn, on oath says that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893, according to his best information and belief.

JOHN F. WALLICK,
District Superintendent.

Subscribed and sworn to before me this 11th day of July, 1894.

JNO. M. BUTLER, JR.,
Notary Public.

74 This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

(Endorsed on the back:) Return of the Western Union Telegraph Co. under house bill No. 431, approved March 6, 1893. 1894. Filed July 11, 1894. J. O. Henderson, auditor of State.

"And now comes the plaintiff, by its attorneys, and files a demurrer to the defendant's answer to the supplemental complaint herein, which demurrer is in the words and figures following, that is to say:"

STATE OF INDIANA, } ss:
County of Marion, }

THE STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290. Circuit Court.

Demurrer to Answer of the Defendant to the Supplemental Complaint.

The plaintiff demurs to the answer of the defendant to the supplemental complaint herein, and for cause of demurrer shows the court that the same does not state facts sufficient to constitute a defense to the said supplemental complaint.

Wherefore, etc.

WILLIAM A. KETCHAM,
Attorney General.

A. G. SMITH,
LEON O. BAILEY,
MERRILL MOORES,
Of Counsel.

And afterwards, to wit, on the 3d day of September, 1895, being the second judicial day of the September term, 1895, of said court, before the same honorable judge, the following proceedings were had herein:

"Come now the parties, by counsel, and the court being fully advised in the premises, sustains the plaintiff's demurrer to the defendant's answer to the supplemental complaint herein, to which ruling of the court the defendant at the time excepts."

75 And afterwards, to wit: on the 9th day of September, 1895, being the seventh judicial day of the September term, 1895, of said court, before the same honorable judge, the following proceedings were had herein:

THE STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Judgment.

Comes now the plaintiff by its attorney general and by Alonzo Greene Smith, Leon O. Bailey and Merrill Moores of counsel, and

now comes also the defendant, by Butler, Snow & Butler and Samuel O. Pickens, its attorneys, and the plaintiff now in open court advises and informs the court that it does not desire to insist upon its application for the appointment of a receiver, but for the purposes of the trial herein waives and withdraws the allegations of the complaint touching the prayer for the appointment of a receiver, without prejudice, however, to the right of said plaintiff to renew such application hereafter in aid of the judgment, in the event that it shall hereafter seem desirable or necessary to renew such application. And the defendant thereupon refused to plead further and elected to abide by its answer. And this cause thereupon coming on to be heard for the purpose of assessing the plaintiff's damages only, and having been specially set for trial at this time, is now submitted to the court for finding and judgment without the intervention of a jury, and the court having heard the evidence and being fully advised in the premises finds that there is due for the taxes assessed against the defendant in the several counties of the State named in the complaint for the year 1893, together with the penalties thereon, the sum of fifty-five thousand seven hundred and seventy-four dollars and forty-four cents ($55,774.44), and that there is due for the taxes for the year 1894, together with the penalties thereon, the sum of fifty-three thousand eight hundred and ten dollars and ninety-one cents ($53,810.91), and the court now assesses the plaintiff's damage at the sum of one hundred and nine thousand five hundred and eighty-five dollars and thirty-five cents ($109,585.35), to which finding and assessment of damages the defendant at the time excepts.

76 It is therefore considered and adjudged by the court that the plaintiff for its own use and benefit, and for the use and benefit of the several counties, townships and cities within the State in whose favor taxes were assessed against said defendant during the years 1893 and 1894, do have and recover of the defendant, The Western Union Telegraph Company, the sum of one hundred and nine thousand five hundred and eighty-five dollars and thirty-five cents ($109,585.35), its damages so assessed as aforesaid, together with its costs and charges in this behalf laid out and expended, taxed at —— dollars ($——).

All of which is finally considered, ordered and adjudged.

Inasmuch, however, as it is made known and shown to the court by the agreement of the parties, that there is now pending in the Supreme Court of the United States a writ of error to the supreme court of Indiana, in the cause of The Western Union Telegraph Company, plaintiff in error, *vs.* Thomas Taggart, as auditor of Marion county, Indiana, *et al.*, defendants in error, being cause No. 15952, in which the validity of the tax laws of the State of Indiana and the validity of the taxes embraced in this action is denied by the defendant herein, it is now ordered by the agreement of the parties, the defendant not waiving its right of appeal or any rights incident thereto, that no execution or other process shall issue upon the above judgment until action shall have been had by the said Supreme Court of the United States upon said writ of error, pro-

vided said cause shall be decided on or before the 15th day of December next, and in the event said judgment of the supreme court of Indiana shall be reversed, the defendant shall be at liberty on three days' notice to the attorney general, to move to redocket this cause and to set aside the judgment herein and to reconsider the rulings had herein, and in the event said judgment shall be affirmed, then and in such event, or at any time after the 15th day of December next, the plaintiff may cause execution to issue, and take such other steps as it may be advised shall be necessary or proper to enforce its rights in the premises.

EDGAR A. BROWN, *Judge.*

And afterwards, to wit, on the 2d day of November, 1895, being the fifty-fourth judicial day of the September term, 1895, of said court, before the same honorable judge, the following proceedings were had herein, that is to say:

"Come now the parties, the plaintiff by its attorney gen-
77 eral, A. G. Smith, L. O. Bailey and Merrill Moores, and the defendant by A. H. Snow and S. O. Pickens, and the defendant now files its motion for a new trial of this cause, as follows, viz:"

STATE OF INDIANA:

In the Marion Circuit Court, September Term, 1895.

THE STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Motion for a New Trial.

The defendant moves the court to set aside the finding and judgment heretofore made and entered herein, and to grant a new trial of said cause upon the following grounds, to wit:

1. Because the decision of the court is not sustained by sufficient evidence;
2. Because the finding of the court is not sustained by sufficient evidence;
3. Because the judgment of the court is not sustained by sufficient evidence;
4. Because the finding and judgment of the court is not sustained by sufficient evidence;
5. Because the decision of the court is contrary to law;
6. Because the finding of the court is contrary to law;
7. Because the judgment of the court is contrary to law;
8. Because the finding and judgment of the court are contrary to law;
9. Because the damages assessed are excessive;
10. Because there is error in the assessment of the amount of recovery in this, that the assessment of the amount of recovery is too large;

11. For error of law occurring at the trial, and at the time excepted to by the defendant, in this, to wit, the error of the court in overruling the second paragraph of the defendant's motion to modify the finding and judgment herein;

12. For error of law occurring at the trial, and at the time excepted to by the defendant, in this, to wit, the error of the court in overruling the third paragraph of the defendant's motion to modify the finding and judgment herein;

13. For error of law occurring at the trial, and at the time excepted to by the defendant, in this, to wit, the error of the court in overruling the fourth paragraph of the defendant's motion to modify the finding and judgment herein;

78 14. For error of law occurring at the trial, and at the time excepted to by the defendant, in this, to wit, the error of the court in admitting in evidence over the objection of the defendant, for irrelevancy and immateriality, the agreed statement of facts as to the balances and aggregate of the principal amount of the taxes which would be due from the defendant for the years 1893 and 1894, if chapter one hundred and seventy-one (171) of the Acts of 1893 were valid, so that the taxes due from the defendant might properly be calculated under its provisions;

15. For error of the law occurring at the trial, and at the time excepted to by the defendant, in this, to wit, the error of the court in excluding, upon the objection of the plaintiff that the same was irrelevant and immaterial, the agreed statement of facts to the effect that at the time of the filing of the original complaint herein, and for a long time thereafter, there was in existence and effect an injunction order of this court in the case of Western Union Telegraph Company *vs.* Thomas Taggart, auditor, *et al.*, by which order the county auditors and the county treasurers of the counties named in the complaint were enjoined from collecting the amounts claimed in the complaint herein as taxes due from the defendant for the year 1893, pending the decision of the appeal of said cause of Western Union Telegraph Company *vs.* Thomas Taggart, auditor, *et al.*, in the supreme court of Indiana, and that immediately upon the dissolution of said injunction order a like injunction order was issued by the supreme court of Indiana pending the decision of the writ of error from the Supreme Court of the United States in said cause, which injunction order is still in full force; and to the effect that at the time of the filing of the supplemental complaint herein and at all times thereafter, there has been, and still is, in existence and effect an injunction order of the circuit court of the United States for the district of Indiana, in the case originally entitled Western Union Telegraph Company *vs.* John O. Henderson, auditor of State, and now entitled by substitution of defendant, Western Union Telegraph Company *vs.* Americus C. Daily, auditor of State, by which injunction order the auditor of State was, and still is, enjoined from certifying to the county auditors of the coun-

79 ties named in the supplemental complaint the valuations made by the State board upon defendant's property in In-

diana under the provisions of chapter 171 of the Acts of 1893, for the year 1894, as apportioned to said counties.

Wherefore the defendant prays that said finding and judgment of the court heretofore entered herein be set aside and a new trial granted in said cause.

ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

"And thereupon the court being fully advised in the premises overrules the said motion for a new trial of this cause, to which ruling the defendant at the time excepts."

"And thereupon the defendant now files its motion to modify the finding and judgment herein, which motion is in the words and figures following:"

In the Marion Ci-cuit Court.

STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Motion to Modify the Finding and Judgment.

Paragraph 1. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein so that the amount for which such judgment shall be rendered shall be forty-four thousand, nine hundred and thirty-three and sixty-one one-hundredths dollars ($44,933.61), and proper penalties, if any penalties shall be finally adjudged due after hearing this motion, instead of one hundred and nine thousand, five hundred and eighty-five and thirty-five one-hundredths dollars ($109,585.35), for the reason that upon the admitted facts in this cause it appears that the amount due from the defendant, in the respective counties named in the complaint as taxes for 1893, reckoned under the provisions of chapter 171, Acts of 1893, exclusive of penalties, and deducting the amounts paid by the defendant on account of taxes for 1893, is twenty thousand, nine hundred and twenty-five and twenty-one one-hundredths dollars ($20,925.21), and the amount due from defendant in said counties as taxes for 1894, reckoned in the same manner and exclusive of penalties, after deducting the amounts paid by the defendant on account of such taxes, is twenty-four thousand, eight and forty one-hundredths dollars ($24,008.40).

80 Paragraph 2. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein so that such judgment shall be rendered without any penalties added in said judgment, that is for the total sum of forty-four thousand, nine hundred and thirty-three and sixty-one

one-hundredths dollars ($44,933.61), and no more, and for grounds of this paragraph of motion defendant says:

1. It appears by the record and admitted facts herein that the defendant has been diligently prosecuting suits in courts of competent jurisdiction for the purpose of determining the question of the constitutionality of the law under which such taxes are assessed, and that during the pendency of said cases, and ever since the alleged taxes herein sued for became due and payable, injunctions from such courts have been in force which prevented the collection of such taxes.

2. The penalty of fifty per cent. mentioned in chapter 171 of the Acts of 1893, is uncollectible for the reason that the said statute, if otherwise valid, whether it makes such penalty a substitute for all other penalties or is in addition thereto, or a penalty upon other penalties as well as upon the principal amounts, is, in so far as it purports to fix such penalty, unconstitutional and void—all other tax-payers of the State of Indiana except those mentioned in said statute being subject to a penalty in case of non-payment of taxes at the time fixed by statute of only ten or sixteen per cent., according to the character of the delinquency—in that it violates art. 1, secs. 1 and 12, art. 10, sec. 1, and art. 4, sec. 22, of the constitution of Indiana, and art. 14, sec. 1, of the Constitution of the United States.

3. Chapter 171 of the Acts of 1893, does not provide for the addition of any penalty whatever, in any suit brought by the Attorney General.

Paragraph 3. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the judgment and finding herein in case it shall be of opinion that any penalties are due from the defendant whatsoever, by striking out and omitting all sums included therein as penalties beyond a sum equal to sixteen per cent. of the amount of the balance found and adjudged to be due from defendant as balance of taxes for 1893, and beyond a sum
81 equal to ten per cent. of the amount of the balance found and adjudged to be due from the defendant as taxes for 1894, on the following ground:

1. That it appears from the admitted facts in this case that the defendant paid or tendered, prior to the third Monday in April, 1894, to the respective county treasurers of the counties named in the complaint herein, as taxes admitted to be due from the defendant for the year 1893, taking or offering to take a receipt "on account of" taxes for 1893, the following sums, to wit: Eleven thousand, six hundred and fifty-four and eighty-two one-hundredths dollars ($11,654.82.)

2. And that the defendant paid or tendered, prior to the third Monday of April, 1895, to the respective county treasurers of the counties named in the complaint herein as taxes admitted to be due from the defendant for the year 1894, taking or offering to take a receipt "on account of" taxes for 1894, the following sums, to wit:

Eleven thousand, five hundred and seven and seventy-five one-hundredths dollars ($11,507.75.)

3. But that in no county for either year did either or any of said amounts so paid or tendered equal the amount of the first installment of the taxes due from the defendant as taxes for the respective years reckoned according to the provisions of chapter 171, Acts of 1893.

4. The fifty per cent. penalty is unconstitutional and void for the reasons above stated.

Paragraph 4. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein, in case the court shall be of the opinion that any penalties are due from the defendant whatsoever, and in case the court shall further be of the opinion that a penalty of sixteen per cent. on the unpaid balance of the taxes of 1893 and a penalty of ten per cent. on the unpaid balance of the taxes of 1894, are not the sole and only penalties due from the defendant, by striking out and omitting all sums included therein as penalties, beyond a sum equal to fifty per cent. of the amount found and adjudged to be due from the defendant as the balance of the taxes for 1893 and 1894, on the ground that if any penalties are due from the defendant whatsoever, and if the sixteen per cent. upon the unpaid balance of the taxes of 1893, and ten per cent. upon the unpaid balance of the taxes for 1894, are not the sole and only penalties due from the defendant, and if the penalty of fifty per cent. mentioned in chapter 171 of the Acts of 1893, is not wholly void on account of said statute being unconstitutional in that respect, the fifty per cent. mentioned in said statute is a substitute for and includes all other penalties.

ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

82 And the court having heard the statement of counsel, and being fully advised thereon, now sustains the first paragraph of said motion, and thereupon orders and adjudges that the finding and judgment herein be modified by inserting and substituting in lieu of the amount and words "($55,774.44) fifty-five thousand seven hundred and seventy-four $\frac{44}{100}$ dollars," the amount and words "($36,409.79) thirty-six thousand four hundred and nine and $\frac{79}{100}$ dollars," where the first-mentioned amounts and words occur in said finding and judgment; and by inserting and substituting in lieu of the amount and words "($53,810.91) fifty-three thousand eight hundred and ten and $\frac{91}{100}$ dollars" the amount and words, viz., "($39,613.86) thirty-nine thousand six hundred and thirteen and $\frac{86}{100}$ dollars," where the amount and words "($53,810.91) fifty-three thousand eight hundred and ten and $\frac{91}{100}$" occur in said finding and judgment; and by inserting and substituting in lieu of the amount and words "($109,585.35) one hundred and nine thousand five hundred and eighty-five and $\frac{35}{100}$ dollars" the amount and words "($76,023.65) seventy-six thousand and twenty-three and

$\frac{65}{100}$ dollars," where the amount and words "($109,585.35) one hundred and nine thousand five hundred and eighty-five and $\frac{35}{100}$," occur in said finding and judgment, and the judgment is hereby diminished and remitted to the extent of the difference between the former and substituted amounts.

And the court, being fully advised in the premises, overrules the second, third and fourth paragraphs of the defendant's said motion to modify the finding and judgment herein, to each of which rulings overruling each of said paragraphs of said motion, the defendant at the time excepts.

And the defendant now moves the court for a time within which to file a bill of exceptions herein, which motion is granted, and sixty (60) days are given within which to file a bill of exceptions herein.

And the defendant now prays an appeal of this cause to the supreme court of the State of Indiana, which is granted, and the amount of the appeal bond fixed at one hundred and twenty thousand dollars ($120,000.00), and John F. Wallick approved as
83 the sole surety thereon, and ten (10) days are given within which to file such appeal bond.

And the defendant now files its appeal bond in said penal sum, with said John F. Wallick as surety, which bond is now approved by the court, and it is in these words:

"Know all men by these presents, that The Western Union Telegraph Company, as principal, and John F. Wallick as surety, are held and firmly bound unto the State of Indiana in the penal sum of one hundred and twenty thousand dollars ($120,000), for the payment of which, well and truly to be made, the said obligors bind themselves, their successors, assigns, heirs, executors and administrators firmly by these presents.

The condition of this bond is such that, whereas, the Western Union Telegraph Company has on this 2d day of November, 1895, prayed an appeal to the supreme court of Indiana, from the circuit court of Marion county, State of Indiana, in the case of The State of Indiana *vs.* The Western Union Telegraph Company, No. 7290, in which case The Western Union Telegraph Company is defendant and The State of Indiana is plaintiff:

Now, therefore, if the Western Union Telegraph Company shall duly prosecute its appeal and abide by and pay the judgment and costs which may be rendered or affirmed against it, then this obligation to be void, otherwise to be in full force and effect.

In witness whereof, the said obligor, The Western Union Telegraph Company, has hereunto caused its corporate name to be signed and its seal to be affixed by John F. Wallick, as attorney-in-fact, and the said John F. Wallick has hereunto signed his name on the 2d day of November, 1895.

THE WESTERN UNION TELE- [SEAL.]
GRAPH COMPANY,
By JOHN F. WALLICK,
Dist. Superintendent and Attorney-in-fact.
JOHN F. WALLICK. [SEAL.]

Approved November 2, 1895.

EDGAR A. BROWN, *Judge.*"

Filed November 2, 1895.

EDGAR A. BROWN. *Judge.*

And be it remembered, that afterwards, to wit, on the 26th day of December, 1895, being the 46th judicial day of the November, 1895, term of the said court, the following proceedings were had in said cause, that is to say:

Comes now the defendant by its counsel and files its bill of exceptions, which is signed by the court, sealed, filed and made a part hereof, and is in the words and figures as follows, to wit:

84 STATE OF INDIANA:

In the Marion Circuit Court.

THE STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Defendant's Bill of Exceptions.

Be it remembered, that on the 9th day of September, 1895, being the 7th judicial day of the September term, 1895, of the said court, this cause came on to be heard for the purpose of assessing the plaintiff's damages only.

The plaintiff, to sustain the issue on that behalf, offered in evidence an agreed statement of facts as to the balance and aggregate of the principal amount of taxes assessed and levied against the defendant and upon its property for the years 1893 and 1894 under the provisions of chapter 171 of the Acts of 1893 of the General Assembly of the State of Indiana, it being at the time stated and agreed in open court that the facts stated in said agreed statement were true, as shown by the records in the office of the auditor of State of Indiana, but that the records showing the truth thereof were voluminous and were in constant use in such office, and that said agreed statement of facts was made and presented in lieu of the formal production of the original evidence shown by such records, in order to facilitate the trial of this cause and to prevent the interruption of the public business by producing such records in this court; to which evidence, and to the introduction thereof, the defendant at the time objected on the ground then stated to the court that the said agreed statement of facts was irrelevant and immaterial, because the said chapter 171 of the Acts of 1893 of the General Assembly of the State of Indiana, under which defendant's property was assessed for taxation for each of said years, upon which assessments the said taxes were computed and extended, is unconstitutional and void, and because the said taxes set forth in said agreed statement of facts, and each item thereof, are illegal, wrongful and void, which objection the court overruled,

to which ruling of the court the defendant at the time ex-
85 cepted; and thereupon the said agreed statement of facts was admitted and read in evidence over defendant's objection, and the said agreed statement of facts is in words and figures following, to wit:

STATE OF INDIANA:

In the Marion Circuit Court, September Term, 1895.

THE STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Agreed Statement of Facts.

It is agreed by and between the parties to the above-entitled cause that the evidence in said cause would establish the following facts:

That the balance of taxes assessed and levied against the defendant and upon its property for the year 1893 under and pursuant to the provisions of chapter 171 of the Acts of 1893 of the General Assembly of the State of Indiana, in the counties named in the original complaint herein, as shown by the tax duplicates in the offices of the county treasurers and county auditors of said counties, without penalties or interest, and after deducting all credits on account of payments made on said taxes in said counties for the year 1893, is the sum of twenty thousand nine hundred and twenty-five dollars and twenty-one cents ($20,925.21); the balance so assessed and levied against said defendant in each of said several counties being as specifically set forth in the complaint herein. And that the aggregate balance of taxes in the counties named in the supplemental complaint herein, computable and leviable upon the assessment and valuation for taxation of defendant's property in the State of Indiana for the year 1894, as made and apportioned to the said counties by the State board of tax commissioners of the State of Indiana at its session of 1894, under and pursuant to the provisions of chapter 171 of the Acts of 1893 of the General Assembly of the State of Indiana, without penalties or interest, and after deducting all credits on account of payments made on said taxes of defendant in said counties for the year 1894, is the sum of twenty-four thousand and eight dollars and forty cents ($24,008.40), the balance so assessed and levied against said defendant in each of said counties being as specifically set forth in the supplemental complaint herein.

86 And it is agreed and stipulated in open court that this agreed statement of facts may be admitted in evidence upon the hearing of this cause in lieu of the record and documentary evidence and all other proof of said facts, subject to objections and exceptions on the ground of immateriality and irrelevancy and the

invalidity of said act of the General Assembly of the State of Indiana.

WILLIAM A. KETCHAM,
Attorney General of Indiana.
ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

And thereupon the plaintiff rested.

And be it further remembered, that upon said hearing on said day the defendant offered in evidence an agreed statement of facts to the effect that at the time of the filing of the original complaint herein, and for a long time thereafter, that there was in existence and effect an injunction order of this court in the case of Western Union Telegraph Company *vs.* Thomas Taggart, auditor, *et al.*, by which order the county auditors and county treasurers of the counties named in the complaint were enjoined from collecting the amounts claimed in the complaint herein as taxes due from the defendant for the year 1893, pending the decision of the appeal of said cause of Western Union Telegraph Company *vs.* Thomas Taggart, auditor, *et al.*, in the supreme court of Indiana, and that immediately upon the dissolution of such injunction order a like injunction order was issued by the supreme court of Indiana pending the decision of the writ of error from the Supreme Court of the United States in said cause, which injunction order is still in full force: and to the effect that at the time of the filing of the supplemental complaint herein, and at all times thereafter there has been, and still is, in existence and effect an injunction order of the circuit court of the United States for the district of Indiana, in the case originally entitled Western Union Telegraph Company *vs.* John O. Henderson, auditor of State, and now entitled, by substitution of defendant, Western Union Telegraph Company *vs.* Americus C. Daily, auditor of State, by which injunction order the auditor of State was, and still is, enjoined from certifying to the county auditors of the counties named in the supplemental complaint the valuations made by the State board upon defendant's property in Indiana under the provisions of chapter 171 of the Acts of 1893, for the year 1894, as apportioned to said counties. It being, at
87 the time, stated and agreed in open court, that the facts stated in said agreed statement were true as shown by the records of the suits therein referred to on file in the courts named, but that said records could not readily be produced in this court, and that said agreed statement of facts was made and presented in lieu of the formal production of the original evidence shown by such records in order to facilitate the trial of this cause.

To which evidence so offered to be introduced by the defendant, and to the introduction thereof, the plaintiff at the time objected, on the ground that said agreed statement of facts was irrelevant and immaterial; which objection the court sustained, to which ruling of the court in sustaining said objection the defendant at the time excepted. And the said agreed statement of facts so offered in evi-

dence by the defendant and excluded by the court is in words and figures following, to wit:

STATE OF INDIANA:

In the Marion Circuit Court, September Term, 1895.

THE STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Agreed Statement of Facts.

It is agreed by and between the parties to the above-entitled cause that the evidence would establish the following facts:

That at the time of the filing of the original complaint herein, and for a long time thereafter, there was in existence and effect an injunction order of the circuit court of Marion county, Indiana, in the case of Western Union Telegraph Company *vs.* Thomas Taggart, auditor of Marion county, Indiana, *et al.*, by which order the county auditors and county treasurers of the counties named in the original complaint herein were enjoined and prevented from collecting the amounts claimed in said complaint as taxes due from the defendant for the year 1893, pending the decision of the appeal of said cause of Western Union Telegraph Company *vs.* Thomas Taggart, auditor, *et al.*, in the supreme court of the State of Indiana, and that immediately upon the dissolution of said injunction order a like injunction order was, with due notice to the defendants in said cause, issued by the said supreme court of the State of Indiana pending the decision of the writ of error duly issued in said cause from the Supreme Court of the United States to the supreme court of the State of Indiana for the removal of said cause to the Supreme Court of the United States, which injunction order has ever since been, and still is, in force and effective against the auditors and treasurers of said counties.

88 And that at the time of the filing of the supplemental complaint herein, and at all times thereafter, there has been, and still is, in existence and in force, a temporary injunction order of the circuit court of the United States for the district of Indiana pending the litigation in the case originally entitled Western Union Telegraph Company *vs.* John O. Henderson, auditor of State, and now entitled, by substitution of defendant, Western Union Telegraph Company *vs.* Americus C. Daily, auditor of State, by which injunction order the auditor of State of the State of Indiana was, and still is, enjoined from certifying to the county auditors of the counties named in the supplemental complaint herein the valuation and assessment for taxation of defendant's property in Indiana for the year 1894, made and apportioned to said counties by the State board of tax commissioners of the State of Indiana at its session of 1894, under the provisions of chapter 171 of the Acts of 1893 of the General Assembly of the State of Indiana.

And it is agreed and stipulated by the parties in open court that

this agreed statement of facts may be offered in evidence upon the hearing of this cause in lieu of the record and documentary evidence and all other proof of said facts, subject to objections and exceptions on the ground of immateriality and irrelevancy.

WILLIAM. A. KETCHAM,
Attorney General of Indiana.
ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

And be it further remembered, that upon said hearing on said day the defendant offered in evidence an agreed statement of facts showing that the defendant paid or tendered prior to the third Monday of April, 1894, to the respective county treasurers of the counties named in the complain- therein, as taxes admitted by the defendant to be due from the defendant in said counties for the year 1893, taking or offering to take receipts therefor "on account of" taxes for the year 1893, aggregating the sum of eleven thousand six hundred and fifty-four dollars and eighty-two cents
89. ($11,654.82); and that the defendant paid or tendered prior to the third Monday of April, 1895, to the respective county treasurers of said counties, as taxes admitted by the defendant to be due from the defendant in said counties for the year 1894, taking, or offering to take, receipts therefor "on account of" taxes for the year 1894, aggregating eleven thousand five hundred and seven dollars and seventy-five cents ($11,507.75); it being agreed at the time in open court that the balances shown in the complaint and supplemental complaint, respectively, to be due, were ascertained by crediting on the taxes assessed the amounts so paid by the defendant in each of said years.

Said agreed statement of facts was admitted in evidence, and is in the words and figures following, to wit:

STATE OF INDIANA:

In the Marion Circuit Court.

THE STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Agreed Statement of Facts.

It is agreed by and between the parties to the above-entitled cause that the defendant paid or tendered prior to the third Monday of April, 1894, to the respective county treasurers of the counties named in the complaint herein, as taxes admitted by the defendant to be due from the defendant in said counties for the year 1893, taking or offering to take receipts therefor "on account of" taxes for the year 1893, aggregating the sum of eleven thousand six hundred and fifty-four dollars and eighty-two cents ($11,654.82).

And that the defendant paid or tendered prior to the third Monday of April, 1895, to the respective county treasurers of the counties named in the complaint herein, as taxes admitted by the defendant to be due from the defendant in said counties for the year 1894, taking or offering to take receipts therefor "on account of" taxes for the year 1894, aggregating eleven thousand five hundred and seven dollars and seventy-five cents ($11,507.75).

And it is agreed and stipulated by the parties in open court that this agreed statement of facts may be offered in evidence upon the hearing of this cause in lieu of record and documentary evidence and all other proof of said facts, subject to objections and exceptions on the ground of immaterialty and irrelevancy.

WILLIAM A. KETCHAM,
Att'y Gen'l of Ind., Attorney for Plaintiff.
ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

90 And this was all the evidence given in this cause.

And be it further remembered, that on the 2d day of November, 1895, being the 54th judicial day of the September term, 1895, of said court, the defendant filed its motion to modify the finding and judgment of the court in said cause, which motion is in words and figures following, to wit:

In the Marion Circuit Court.

STATE OF INDIANA *vs.* WESTERN UNION TELEGRAPH COMPANY.	No. 7290.

Paragraph 1. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein so that the amount for which said judgment shall be rendered shall be forty-four thousand, nine hundred and thirty-three and sixty-one one-hundredths dollars ($44,933.61), and proper penalties, if any penalties shall be finally adjudged due after hearing this motion, instead of one hundred and nine thousand, five hundred and eighty-five and thirty-five one-hundredths dollars ($109,585.35), for the reason that upon the admitted facts in this cause it appears that the amount due from the defendant, in the respective counties named in the complaint as taxes for 1893, reckoned under the provisions of chapter 171, Acts of 1893, exclusive of penalties, and deducting the amounts paid by defendant on account of taxes for 1893, is twenty thousand, nine hundred and twenty-five and twenty-one one-hundredths dollars ($20,925.21), and the amount due from the defendant in said counties as taxes for 1894, reckoned in the same manner, and exclusive of penalties, after deducting the amounts paid by the defendant on

account of such taxes, is twenty-four thousand, eight and forty one-hundredths dollars ($24,008.40).

Paragraph 2. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein so that such judgment shall be rendered without any penalties added in said judgment, that is, for the total sum of forty-four thousand, nine hundred and thirty-three and sixty-one one-hundredths dollars ($44,933.61), and no more, and for grounds of this paragraph of motion defendant says:

91 1. It appears by the record and admitted facts herein that the defendant has been diligently prosecuting suits in courts of competent jurisdiction for the purpose of determining the question of the constitutionality of the law under which such taxes are assessed, and that during the pendency of said cases, and ever since the alleged taxes herein sued for became due and payable, injunctions from such courts have been in force which prevented the collection of such taxes.

2. The penalty of fifty per cent. mentioned in chapter 171 of the Acts of 1893, is uncollectible for the reason that the said statute, if otherwise valid, and if it makes such penalty a substitute for all other penalties or in addition thereto, or a penalty upon other penalties as well as upon the principal amount, is, in so far as it purports to fix such penalty, unconstitutional and void, all other taxpayers of the State of Indiana except those mentioned in said statute being subject to a penalty in case of non-payment of taxes at the time fixed by statute of only ten or sixteen per cent., according to the character of the delinquency, in that it violates article 1, sections 1 and 12, article 10, section 1, and article 4, section 22, of the constitution of Indiana, and article 14, section 1, of the Constitution of the United States.

3. Chapter 171 of the Acts of 1893, does not provide for the addition of any penalty whatever, in any suit brought by the attorney general.

Paragraph 3. The defendant, not admitting, but expressly denying, that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein, in case it shall be of opinion that any penalties are due from the defendant whatsoever, by striking out and omitting all sums included therein as penalties beyond a sum equal to 16 per cent. of the amount of the balance found and adjudged to be due from the defendant as balance of taxes for 1893, and beyond a sum equal to 10 per cent. of the amount of the balance found and adjudged to be due from the defendant as taxes for 1894, on the following ground:

1. That it appears from the admitted facts in this case that the defendant paid or tendered, prior to the third Monday of April, 1894, to the respective county treasurers of the counties named in the complaint herein, as taxes admitted to be due from the defendant for the year 1893, taking or offering to take a receipt "on account of" taxes for 1893, the following sums, to wit, eleven

thousand six hundred and fifty-four dollars and eighty-two cents ($11,654.82).

92 2. And that the defendant paid or tendered, prior to the third Monday of April, 1895, to the respective county treasurers of the counties named in the complaint herein, as taxes admitted to be due from the defendant for the year 1894, taking or offering to take a receipt "on account of" taxes for 1894, the following sums, to wit, eleven thousand five hundred and seven dollars and seventy-five cents ($11,507.75).

3. But that in no county for either year did either or any of said amounts so paid or tendered equal the amount of the first installment of the taxes due from the defendant as taxes for the respective years, reckoned according to the provisions of chapter 171, Acts of 1893.

4. The 50 per cent. penalty is unconstitutional and void for the reasons above stated.

Paragraph 4. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein, in case the court shall be of opinion that any penalties are due from the defendant whatsoever, and in case the court shall further be of opinion that a penalty of 16 per cent. on the unpaid balance of the taxes of 1893, and a penalty of 10 per cent. on the unpaid balance of the taxes for 1894, are not the sole and only penalties due from defendant, by striking out and omitting all sums included therein as penalties beyond a sum equal to 50 per cent. of the amount found and adjudged to be due from the defendant as the balance of the taxes for 1893 and 1894, on the ground that if any penalties are due from the defendant whatsoever, and if the 16 per cent. upon unpaid balance of the taxes for 1893, and 10 per cent. upon the unpaid balance of the taxes for 1894, are not the sole and only penalties due from the defendant, and if the penalty of 50 per cent. mentioned in chapter 171 of the Acts of 1893 is not wholly void on account of said statute being unconstitutional in that respect, the 50 per cent. mentioned in said statute is a substitute for and includes all other penalties.

ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

93 And the court, being fully advised, sustained said motion as to the first paragraph thereof, and overruled the said motion as to the second, third and fourth paragraphs thereof, to which ruling of the court in overruling said motion as to the second, third and fourth paragraphs thereof, and the ruling of the court as to each of said second, third and fourth paragraphs separately, the defendant at the time excepted.

And be it further remembered, that on the 2d day of November, 1895, being the fifty-fourth judicial day of the September term, 1895, of said court, the defendant filed its motion to set aside the finding and judgment of the court in said cause, and for a new trial of said

cause, which motion was by the court overruled, to which ruling the defendant at the time excepted, and prayed the court to grant time in which to file bills of exceptions.

And the court, being duly advised, granted the defendant sixty days in which to file bills of exceptions.

And be it further remembered, that on the 26th day of December, 1895, the defendant presented to the Honorable Edgar A. Brown, sole judge of said court, this, its bill of exceptions.

And now, on this 26th day of December, 1895, being within the time heretofore named for the filing of bills of exceptions, this bill is signed, sealed, filed and made a part of the record in said cause.

EDGAR A. BROWN, *Judge.* [SEAL.]

STATE OF INDIANA, } *ss:*
Marion County, }

I, James W. Fesler, clerk of the circuit court, within and for the county aforesaid, do hereby certify that the foregoing transcript contains full, true and complete copies of all the entries of proceedings had, and of all the papers filed in said Marion circuit court belonging, on appeal, to this cause, numbered 7290, as appear from the records and files thereof, now in my custody and keeping.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court, at my office, in the city of Indianapolis, the 30th day of December, 1895.

[L. S.] JAMES W. FESLER, *Clerk.*

94 STATE OF INDIANA:

In the Supreme Court.

WESTERN UNION TELEGRAPH COMPANY, Appellant, }
vs. }
THE STATE OF INDIANA, Appellee. }

Assignment of Errors.

The appellant avers that there is error in the proceedings and judgment in the above-entitled cause, in this:

1. The original complaint of appellee does not state facts sufficient to constitute a cause of action.

2. The supplemental complaint does not state facts sufficient to constitute a cause of action.

3. The court erred in overruling the appellant's demurrer to the supplemental complaint.

4. The court erred in sustaining the appellee's demurrer to the answer of appellant to the original complaint.

5. The court erred in sustaining appellee's demurrer to the answer of appellant to the supplemental complaint.

6. The court erred in overruling the appellant's motion for a new trial.

7. The court erred in overruling the second paragraph of appellant's motion to modify the finding and judgment of the court.

8. The court erred in overruling the third paragraph of appellant's motion to modify the finding and judgment of the court.

9. The court erred in overruling the fourth paragraph of appellant's motion to modify the finding and judgment of the court.

Wherefore appellant prays that the judgment be reversed.

SAMUEL O. PICKENS,
BROWN & WELLS,
Attorneys for Appellant.

Filed December 30, 1895.

ALEX. HESS, *Clerk.*

95 WESTERN UNION TELEGRAPH COMPANY, Appellant, *vs.* THE STATE OF INDIANA, Appellee. } No. 17831.

Joinder in Error.

The said appellee, The State of Indiana, says that there is no error in the record, and asks that the judgment be in all things affirmed.

WILLIAM A. KETCHAM,
Attorney General of Indiana.
ALONZO GREENE SMITH,
LEON O. BAILEY,
MERRILL MOORES, *Of Counsel.*

Filed December 30, 1895.

ALEX. HESS, *Clerk.*

96 And afterwards, to wit, on the same day, the above cause was submitted to the court for decision and notices thereof issued under rule 18 of said court.

And afterwards, to wit, on the 27th day of February, 1896, came appellant, by counsel, and filed its brief herein.

And on the same day came appellant, by counsel, and filed a copy of a brief filed in cause No. 17200.

And afterwards, to wit, on the 16th day of July, 1896, came the appellee, by counsel, and filed its brief herein.

And afterwards, to wit, on the 28th day of September, 1896, came appellant, by counsel, and filed its reply brief herein.

And afterwards, to wit, on the 2nd day of October, 1896, the same being the 113th judicial day of the May term, 1896, came the parties, by counsel, and the court, being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Howard, J.; which opinion is in the words and figures following, to wit:

97 This was an action by the State for the collection of taxes due by the appellant. It was brought under provisions of

section 11 of an act supplementary to and amendatory of the general tax law of 1891, and providing for the taxation of telegraph, telephone, express, and other like corporations, approved March 6, 1893. Acts 1893, 374; R. S. 1894, sec. 8488.

The section reads as follows:

"SEC. 11. In case any such association, copartnership or corporation as named in this supplemental and amendatory act shall fail or refuse to pay any taxes assessed against it in any county or township in the State, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the State of Indiana by the prosecuting attorneys of the different judicial circuits of the State, on the relation of the auditors of the different counties of this State, and the judgment in said action shall include a penalty of fifty per cent. of the amount of taxes so assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over, or across which the line or route of such association, copartnership or corporation shall extend, or in any county where such association, company, copartnership or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership or corporation shall have refused to pay the whole of the taxes assessed against the same by said board of tax commissioners, or in case such association, company, copartnership or corporation shall have refused to pay the taxes or any portion thereof assessed to it, in any particular county or counties, township or townships, such action may include the whole or any portion of the taxes so unpaid in any county or counties, township or townships, but the attorney general may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions in each separate county or township, or join counties and townships, as he may prefer. All collection of taxes for or on account of any particular county made in any such suit or suits, shall be by said auditor of State accounted for as a credit to the respective counties for or
98 on account of which such collections were made by said auditor of State, at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the State; and upon such settlement being made, the treasurers of the several counties shall, at their next settlements, enter credits upon the proper duplicates in their offices, and at the next settlement with such county report the amount so received by him in his settlement with the State, and proper entries shall be made with reference thereto: Provided, however, that in any such action the amount of the assessment fixed by said State board of tax commissioners and apportioned to such county, or apportioned by the county auditor to any particular township, shall not be controverted."

The original complaint was filed by the attorney general May 7, 1894, and was for the collection of the taxes then remaining due by the appellant for the year 1893 in the several counties of the State in which the company owned property subject to taxation under

said act. The answer to this complaint, which was not filed until January 12, 1895, was an elaborate and detailed attack upon the validity of the law. A demurrer was sustained thereto June 11, 1895.

In relation to this answer the following admission is made in appellant's brief: "The allegations of the answer to the original complaint are in substance the same as the allegations in the telegraph company's complaint in the suit of the company against Taggart *et al.*, as auditors and treasurers of the various counties in the State, changed so as to constitute an answer."

As the contentions of the company in the suit referred to against Taggart *et al.* were overthrown and the validity of the law sustained, both in this court and in the Supreme Court of the United States, we may consider the decisions so rendered a sufficient reply to the arguments here repeated against the constitutionality of the law. W. U. Tel. Co. *vs.* Taggart, 141 Ind., 281; Same — U. S. —. That the proceedings before the State board of tax commissioners were in all respects regular also follows, for it is expressly admitted in the answer that in assessing appellant's property the State board proceeded in accordance with the requirements of the law so upheld.

99 On the same day on which the demurrer to the answer to the original complaint was sustained—that is, June 11, 1895—the attorney general, by leave of court, filed a supplemental complaint for the collection of appellant's taxes for 1894, those taxes having also become due and being then unpaid. To this supplemental complaint a demurrer was overruled on June 22, 1895. An answer to the supplemental complaint was filed June 27, 1895, and on September 3, 1895, a demurrer was sustained to the answer.

In the first paragraph of the answer to the supplemental complaint it is said: "The defendant, for answer to the supplemental complaint herein, adopts and makes a part hereof all the allegations of the answer to the complaint herein not specially relating to the assessment and collection of taxes for the year 1893 except as herein differently alleged." Since this answer to the supplemental complaint was filed, June 27, 1895, and the answer to the original complaint had been taken out by the sustaining of the demurrer thereto, on June 11, 1895, it would seem that the first answer could not thus be brought into the second answer by reference, as here attempted. Except as to the correctness of the ruling on demurrer, the first answer was wholly out of the record at the time when the second answer was filed. In addition, as we have already seen, the decision in the case of W. U. Tel. Co. *vs.* Taggart, *supra*, shows the first answer to have been bad.

In the answer to the original complaint it was specially averred that on the 19th day of December, 1893—that is, before the bringing of this action—the appellant had brought the suit in the case of W. U. Tel. Co. *vs.* Taggart, *supra*, to enjoin the county auditors and treasurers of the several counties in which the appellant owned property from proceeding to collect the taxes herein sued for, and that while

the injunction prayed for was denied, both in the trial court and in this court, yet that a temporary injunction was granted in each of the said courts until the final decision of the case in the successive appeals taken therein, and that such temporary injunction was still in force at the time of filing said answer.

In the answer to the supplemental complaint a similar averment was made as to injunction granted in the circuit court of the United States for the district of Indiana prohibiting the auditor of State from certifying to the several county auditors the valuations
100 of appellant's property as made by the State board of tax commissioners for the year 1894. W. U. Tel. Co. *vs.* Henderson, 68 Fed. Rep., 588.

Those averments were not made by way of pleas in abatement as to other suits pending in relation to the collection of the taxes for which this suit was brought; neither did the averments show that the injunction against the officers named had been in any way violated; but the intention seems to have been to argue that, in some manner not shown, The State of Indiana, the plaintiff in the case at bar, had been in such other suits enjoined from bringing her action in this case for the collection of the overdue taxes.

In so far as the action in the United States court is concerned, it is enough to say that the court could not and did not assume to have any jurisdiction to enjoin any action on the part of the State. As to the restraining order granted in the trial court and continued in this court in the case of W. U. Tel. Co. *vs.* Taggart, that had relation to county auditors and county treasurers. No attempt was made or could be made to control the action of the State, provided the law afforded her any remedy independent of the action of the officers against whom the restraining orders had been issued.

But the statute under consideration did furnish the State an additional and independent remedy for the collection of the taxes due her. It is provided in section 11, as we have seen, that in case any such corporation "shall fail or refuse to pay any taxes assessed against it, * * * in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the State of Indiana" for the collection of such taxes by the prosecuting attorney or the attorney general, according to the respective jurisdictions of these officers. In instituting this action the attorney general merely availed himself of the power given the State by the law itself. It will not be questioned that the emergency had arisen which was contemplated in the statute; the appellant company had failed and refused to pay the taxes assessed against it and which were overdue. The action for their collection might therefore be prosecuted in the name of the State, and this is what was done.

There is good reason, too, for the additional remedy thus
101 given. The general tax law contemplates the payment of all taxes in the year succeeding their assessment, easing such payment by providing that it may be made in two installments. A possibility of delinquency is also provided for, but only for one year longer, and for the first six months of delinquency a penalty

of ten per cent. is fixed, to be increased to sixteen per cent. for the second six months of delinquency.

It has been held that the law does not provide for interest on such delinquent taxes, but only the penalties named. Evansville, &c., R. R. Co. *vs.* West, 139 Ind., 254. There remain, therefore, in general, only the provisions for distress and sale of property, in order finally to make collection of taxes from dilatory, obdurate, or dishonest tax-payers. But the property of telegraph and other corporations provided for in this act is of such a nature that it or a part of it cannot be sold for the payment of taxes without manifest inconvenience to the public. Receivers may be appointed and other appropriate measures taken for the collection of debts due by such corporation, but only so that their business, in which the public and the State have a vital interest, may not be interrupted.

Louisville, &c., R'y Co. *vs.* Boney, 117 Ind., 501.
W. U. Tel. Co. *vs.* Massachusetts, 125 U. S., at p. 554.

The legislature, in its wisdom, conceived that for such properties it was advisable that there should be provision that collection might be made by suit, with appropriate penalties, so that a judgment might stand against the delinquent, to bear interest until such time as the debt might be paid or might be collected in receivership proceedings or otherwise. In this way the public treasury might, in some degree, be compensated for the loss of the use of its revenues caused by the failure to pay taxes when due. The properties being a special and peculiar class, special remedies are appropriate to bring about that equality required in the assessment and collection of taxes. All authorities concede that classification for purposes of taxation is not only permissable, but even necessary.

Home Ins. Co. *vs.* New York, 134 U. S., at p. 606.
R. R. Co. *vs.* Gibbes, 142 U. S., 386.
Cleveland, &c., R'y *vs.* Backus, 133 Ind., at p. 537.
Commonwealth *vs.* Delaware Div. Canal Co. (Pa.), 2 L. R. A., 798.

102 In the last-cited authority it is well said: "The power to impose taxes for the support of the Government, subject to the limitations of the Constitution, belongs to the legislature; the selection of the subjects, their classification, and the methods of collection are purely legislative matters. When the action of the legislature with respect to these matters is not repugnant to the Constitution, it would certainly be a case of the grossest inequality which would call for the interventions of the courts. It may be conceded, however, that classification should be made according to some reasonable, practical rule, drawn from experience, which would prevent a gross inequality in the burdens of taxation. * * * Absolute equality is of course unattainable; a mere approximate equality is all that can reasonably be expected. A mere diversity in the methods of assessments and collections, however, if these methods are provided by general laws, violates no rule of right if when these methods are applied the results are practically uniform.

If there is a substantial uniformity, however different the procedure, there is a compliance with the constitutional provisions; even when there may be some disparity of results, if uniformity is the purpose of the legislature, there is a substantial compliance; nor is classification necessarily based upon any essential differences in the nature or, indeed, the condition of the various subjects; it may be based as well upon the want of adaptability to the same methods of taxation, or upon the impracticability of applying to the various subjects the same methods, so as to produce just and reasonable uniform results, or it may be based upon well-grounded considerations of public policy."

Indeed, in our own tax law it has been found necessary, in order to secure just and uniform results, to classify the property of the State into no less than twelve distinct divisions, differing in various respects, according to the nature of the property, as to the modes of assessment or the modes of collection of the taxes thereon. The object in each case, however, has been to secure uniformity in the rate and assessment of the taxes, that all may pay in the same proportion upon the true cash value in each case.

Appellant makes particular complaint of the fifty per cent. penalty provided for in suits under the statute. What we have
103 said as to the nature of appellant's property and the difficulty in coercing payment of delinquent taxes due thereon will fully answer this objection. In the sale and redemption of other forms of property, in case of delinquency, there is often quite as heavy a penalty imposed before the property is finally relieved from the paramount tax lien. By sec. 56 of the general tax law (sec. 8466, R. S. 1894) the county auditor is required to add fifty per cent. to the valuation in case the property-owner has refused to list his property or subscribe to the oaths required. The validity of a similar penalty was upheld in Boyer *vs.* Jones, 14 Ind., 354. Other like penalties and heavy charges are imposed in different sections of the tax law where the property-holder has been neglectful or otherwise at fault in matters relating to the assessment or payment of his taxes. See numerous provisions of the tax law as to penalties, costs of redemption, &c., resulting from failure to pay taxes when due. Sections 150 to 225 of the general tax law of 1891 (sections 8568–8643, R. S. 1894).

In the event that one is called upon to pay a tax which he believes to be illegal he has two courses open to him. He may resist payment at the hazard of all penalties in case the decision shall be against him or he may pay the tax under protest, and then, in case the decision is in his favor, demand the return of his money. See Rumford Chemical Works *vs.* Ray (R. I.), 34 Atl. Rep., 814.

No one need pay any penalty except through his own wrongful act.

The Government is in need of its revenues, and these revenues will be paid promptly by all good citizens. In case of failure to comply with such duty such penalties will be imposed as will, in the judgment of the law-making power, best compel compliance with the law in each case, to the end that all the property-owners

of the State may bear their equal share of the public burden. Such penalties, as we have seen, are never imposed upon those that pay their taxes when due, the imposition of the penalty being an effort on the part of the law-makers to compel good citizenship on the part of all tax-payers that none may shirk the common duty. The validity of the penalty here complained of has, besides, been already affirmed by this court in the case of State *vs.* Adams Express Co., 144 Ind., —.

104 Other questions discussed by counsel have, as we think, been sufficiently considered by us in this and other cases recently decided. Indeed, in view of the decisions of this court and of the Supreme Court of the United States in relation to our present tax laws, we can find no merit in this appeal. There should be an end to litigation.

The judgment is affirmed.

105 It is therefore considered by the court that the judgment of the court below in the above-entitled cause be in all things affirmed at the cost of the appellant; all of which is ordered to be certified to said court.

And it is further considered by the court that the appellee recover of the appellant the sum of $— for its costs and charges in this behalf expended.

106 And afterwards, to wit, on the 15th day of October, 1896, being the 124th judicial day of said May term, 1896, came The Western Union Telegraph Company, appellant herein, and filed in the office of the clerk of the said supreme court its petition for a writ of error herein from the Supreme Court of the United States to the supreme court of Indiana; which petition is in the words and figures following, to wit:

107 In the Supreme Court of Indiana.

WESTERN UNION TELEGRAPH COMPANY
vs.
THE STATE OF INDIANA. } No. —.

Petition for Writ of Error.

To Honorable Leander J. Monks, chief justice of the supreme court of Indiana:

The Western Union Telegraph Company prays that a writ of error from the Supreme Court of the United States to the supreme court of Indiana in the above-entitled cause may be allowed by your honor as chief justice of the supreme court of Indiana, and for cause thereof alleges—

That by the record, opinion, and judgement in said cause it appears that the validity of a statute of the State of Indiana under the Constitution of the United States was drawn in question, and that the decision of said supreme court of Indiana upheld the validity

of said statute, and that there are therefore questions presented by the record, opinion, and judgement herein which are properly cognizable by the Supreme Court of the United States.

Wherefore petitioner prays for the allowance of the writ of error from the Supreme Court of the United States to the supreme court of Indiana, as above stated, and that your honor will sign the citation thereon.

October 15, 1896.

WESTERN UNION TELEGRAPH COMPANY.
CHAMBERS, PICKENS & MOORES,
Its Attorneys.

BROWN & WELLS, *Of Counsel.*

108 [Endorsed:] 17831. State of Indiana. In the supreme court. The Western Union Telegraph Company, appellant, *vs.* The State of Indiana, appellee. Petition for writ of error. Filed Oct. 15, 1896. Alex. Hess, clerk. Chambers, Pickins & Moores, att'ys for appellant.

109 And on the same day the said Western Union Telegraph Company, by its attorneys, filed in the office of the clerk of said supreme court the citation on said writ of error, duly signed by the Honorable Leander J. Monks, chief justice of the said supreme court, and acknowledgment of service of the said citation by the attorneys for the defendant in error, said citation and acknowledgment of service thereof being hereto next below attached, as follows:

110 UNITED STATES OF AMERICA:

To the State of Indiana:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, thirty days after the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Indiana, wherein The Western Union Telegraph Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the opinion and judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Leander J. Monks, chief justice of the supreme court of Indiana, this 15 day of October, in the year of our Lord one thousand eight hundred ond ninety-six.

LEANDER J. MONKS, *Ch. J.*

I hereby acknowledge service of the above citation this 15 day of October, A. D. 189–.

WILLIAM A. KETCHAM,
Att'y Gen'l of Indiana, for Defendants in Error.
MERRILL MOORES, *Of Counsel.*

111 [Endorsed:] State of Indiana. In the supreme court. The Western Union Telegraph Company, appellant, *v.* The State of Indiana, appellee. Citation. Filed Oct. 15, 1896. Alex. Hess, clerk. Chambers, Pickens & Moores, attorneys for appellant.

112 And the court, being duly advised, finds that there are questions involved in the record, proceedings, opinion, and judgment in this cause which are properly cognizable by the Supreme Court of the United States; a writ of error is allowed from the Supreme Court of the United States to the supreme court of Indiana in said cause, in conformity with the said petition, and the amount of bond on appeal is fixed at fifty thousand dollars.

And the said Western Union Telegraph Company now files in the office of the clerk of said supreme court a writ of error from the Supreme Court of the United States to the said supreme court of Indiana in this cause, said writ being hereto next below attached as follows:

113 UNITED STATES OF AMERICA:

The President of the United States of America to the supreme court of the State of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea and an appeal which is in the said supreme court of Indiana, before you, between The Western Union Telegraph Company and The State of Indiana, the validity of the act of the legislature of Indiana approved March 6, 1893, entitled "An act supplemental to and amendatory of an act entitled 'An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency,' approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight, joint stock associations, companies, copartnerships, and corporations transacting business in the State of Indiana, repealing sections 68, 69, 70, and 71 of said act and all laws in conflict therewith, and declaring an emergency," the same being chapter 171 of the Acts of 1893, is drawn in question, and the decision of the said supreme court of Indiana is in favor of the validity of said statute, and because *of* manifest error hath happened, to the great damage of the said Western Union Telegraph Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that
114 you have the same at Washington thirty days after the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that

error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, this 15th day of October, A. D. 1896.

Seal Circuit Court of the United States, District of Indiana.

NOBLE C. BUTLER,
Clerk of the Circuit Court of the United States for the District of Indiana.

The foregoing writ of error is allowed this 15 day of October, 1896.

LEANDER J. MONKS,
Chief Justice.

115 [Endorsed:] State of Indiana. In the supreme court. The Western Union Telegraph Company, plaintiff in error, *vs.* The State of Indiana, defendant in error. Writ of error. Filed Oct. 15, 1896. Alex. Hess, clerk. Smiley N. Chambers, Samuel O. Pickens, Charles W. Moores, attorneys for plaintiff in error.

116 And now the said Western Union Telegraph Company, appellant herein, files in the office of the clerk of said supreme court its bond on appeal in the penal sum of fifty thousand dollars, with John F. Wallick as surety, which said bond is now taken and approved by the Honorable Leander J. Monks, chief justice of the supreme court of Indiana, and is in the words and figures following, to wit:

117 In the Supreme Court of the United States.

WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
vs.
THE STATE OF INDIANA, Defendant in Error.

Know all men by these presents that The Western Union Telegraph Company, plaintiff in error, as principal, and John F. Wallick and —— ——, as sureties, are held and firmly bound unto The State of Indiana, the defendant in error in the above-entitled cause, in the sum of fifty thousand dollars; for the payment of which said obligors bind themselves, their successors, heirs, executors, and administrators, firmly by these presents.

The condition of this bond is such that whereas the plaintiff in error has sued out its writ of error from the Supreme Court of the United States to the supreme court of Indiana in the above-entitled cause: Now, therefore, if the plaintiff in error shall prosecute its writ of error to effect and if it fail to make its plea good shall answer all damages and costs thereon, then this obligation to be void; otherwise in full force and effect.

In witness whereof the Western Union Telegraph Company has caused its corporate name to be hereunto signed by John F. Wallick, its district superintendent, thereunto duly authorized, as principal, and the said John F. Wallick and —— —— have hereunto signed their names as sureties this 15 day of October, 1896.

WESTERN UNION TELEGRAPH CO.,
By JNO. F. WALLICK, *Att'y-in-fact.*
JNO. F. WALLICK.

Taken and approved by me this 15 day of October, A. D. 1896.
LEANDER J. MONKS, *Ch. J.*

118 [Endorsed:] Bond. Filed Oct. 15, 1896. Alex. Hess, clerk.

119 And afterwards, on the same day, the said Western Union Telegraph Company, by its attorneys, filed in the office of the clerk of said supreme court an assignment of errors in the Supreme Court of the United States of the writ of error herein, said assignment of errors being hereto next below attached as follows:

120 In the Supreme Court of the United States.

WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
vs.
THE STATE OF INDIANA, Defendant in Error.

In error to the supreme court of the State of Indiana.

Assignment of Errors.

The Western Union Telegraph Company for assignment of errors says that there is manifest error in the judgment and proceedings in this cause in this, to wit:

1. The supreme court of Indiana in its opinion and judgment rendered in this cause erred in holding and adjudging that the act of the legislature of the State of Indiana approved March 6, 1893, entitled—

"An act supplementary to and amendatory of an act entitled 'An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency,' approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight, joint stock associations, companies, copartnerships, and corporations transacting business in the State of Indiana, repealing sections 68, 69, 70, and 71 of said act and all laws in conflict therewith and declaring an emergency;"

Said act being chapter 171 of the Acts of Indiana of 1893, is a valid law and not in conflict with any provisions of the Constitution of the United States.

2. The supreme court of Indiana in its opinion and judgment

rendered in this cause erred in holding and adjudging that
121 the sections and provisions of said act of the legislature of Indiana, being chapter 171, Acts of Indiana of 1893, relating to and providing for the taxation of the telegraph companies and relating to and providing for the assessment and valuation for taxation by the State board of tax commissioners of the property of the Western Union Telegraph Company other than that designated by said act as "subject to local taxation within the State," and relating to and providing for the collection of the taxes and the penalties thereon, on such property from such company, provide for and secure to the said Western Union Telegraph Company the "due process of law" required by section 1 of the fourteenth amendment to the Constitution of the United States, touching the assessment and valuation of its said property lawfully subject to taxation in Indiana.

3. The supreme court of Indiana in its opinion and judgment rendered in this cause erred in holding and adjudging that the sections and provisions of said act of the legislature of Indiana, being chapter 171, Acts of Indiana of 1893, relating to and providing for the taxation of telegraph companies and relating to and providing for the assessment and valuation for taxation by the State board of tax commissioners of the property of the Western Union Telegraph Company other than that designated by said act as "subject to local taxation within the State," and relating to and providing for the collection of the taxes and the penalties thereon on such property from such company, do not deny to the said Western Union Telegraph Company "the equal protection of the laws" required by section 1 of the fourteenth amendment to the Constitution of the United States, touching the assessment and valuation of its said property lawfully subject to taxation in Indiana.

4. The supreme court of Indiana in its opinion and judgment rendered in this cause erred in holding and adjudging that the sections and provisions of said act of the legislature of Indiana, being chapter 171, Acts of Indiana of 1893, relating to and provid-
122 ing for the taxation of telegraph companies and relating to and providing for the assessment and valuation for taxation by the State board of tax commissioners of the property of the Western Union Telegraph Company other than that designated by said act as "subject to local taxation within the State," do not violate article 1, section 8, of the Constitution of the United States, which provides that "the Congress shall have power * * * to regulate commerce with foreign nations and among the several States" by requiring the assessment and valuation for taxation by the State board of tax commissioners of the instrumentalities of interstate and international commerce owned and used by said company and the income and earnings of said company from interstate and international commerce under the guise of assessing a part of the property of said company lawfully subject to taxation within the State of Indiana.

Wherefore plaintiff in error prays that the decree of the supreme

court of Indiana may be in all things reversed, and all other proper relief.

October 15, 1896.

SMILEY N. CHAMBERS,
SAMUEL O. PICKENS,
CHARLES W. MOORES,
Attorneys for Plaintiff in Error.

WILLARD BROWN,
CHARLES W. WELLS,
Of Counsel.

123 [Endorsed:] Western Union Telegraph Company, plaintiff in error, *vs.* The State of Indiana, defendant in error. Assignment of errors in the Supreme Court of the United States. Filed Oct. 15, 1896. Alex. Hess, clerk. Smiley N. Chambers, Samuel O. Pickens, Charles W. Moores, attorneys for pl'ff in error.

124 STATE OF INDIANA:

Supreme Court.

I, Alexander Hess, clerk of the supreme court of the State of Indiana, certify the above and foregoing to be a true and complete transcript of the records and proceedings had, papers filed (excepting briefs), motions decided, rulings made, opinions delivered, judgments rendered, and all decrees and orders entered in the supreme court of Indiana in the above-entitled cause; also the original writ of error from the Supreme Court of the United States to the supreme court of Indiana in this cause, and the original citation to the defendant in error and acknowledgment of service thereof and the original assignment of errors in the Supreme Court of the United States on said writ of error and original bond, which said transcript annexed hereto and hereby returned, together with said original writ of error, original citation, and original assignment of errors and original bond, I hereby certify as and for my full return to said writ of error.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court of Indiana, at the city of Indianapolis, this 16th day of October 896.

[Seal Supreme Court, State of Indiana, MDCCCXVI.]

ALEXANDER HESS,
Clerk Supreme Court of Indiana.

Endorsed on cover: Case No. 16,428. Indiana supreme court. Term No., 649. The Western Union Telegraph Company, plaintiff in error, *vs.* The State of Indiana. Filed November 13th, 1896.

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163 U.S. 304
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 649.

THE WESTERN UNION TELEGRAPH COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED NOVEMBER 13, 1896.

(16,428.)

(16,428.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 649.

THE WESTERN UNION TELEGRAPH COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

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1 STATE OF INDIANA:

In the Supreme Court.

Be it remembered that heretofore, to wit, on the 30th day of December, 1895, the same being the 31st judicial day of the November term, 1895, of said court, the Western Union Telegraph Company, by Chambers, Pickens and Moores, its attorneys, and Brown and Wells, its counsel, filed in the office of the clerk of the supreme court of Indiana a transcript of the record and proceedings of the Marion circuit court, of said State, in a cause wherein The State of Indiana was plaintiff and The Western Union Telegraph Company was defendant, together with the assignment of errors endorsed thereon; which transcript and assignment of errors are in the words and figures following, to wit:

2 Be it remembered, that among the records of proceedings had, papers filed, motions decided, objections stated, rulings made, exceptions noted, judgments rendered, decrees entered, etc., in the circuit court of the county of Marion, State of Indiana, are the following in the cause of—

THE STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

And be it also remembered that heretofore, to wit: on the 7th day of May, A. D. 1894, the above-named plaintiff by its attorneys, the attorney general of Indiana and Messrs. Bailey and Ketcham, filed in the office of the clerk of said circuit court a complaint against said defendant, in the words and figures following, to wit:

STATE OF INDIANA, } *sct:*
Marion County, }

In the Circuit Court of Marion County, May Term, 1894.

THE STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Complaint to Enforce Payment of Taxes.

The State of Indiana, plaintiff, complains of The Western Union Telegraph Company, a corporation organized under and by virtue of the laws of the State of New York, defendant and says that for a long time prior to the first day of April, 1893, and ever since continuously, the defendant has been engaged in transmitting to, from, through, in and across the State of Indiana telegraphic messages, and is, within the true intent and meaning of the statute in such cases made and provided, a telegraph company; that on and subse-

quent to the 1st day of April, 1894, such proceedings were had before the State board of tax commissioners of the State of Indiana, the several county boards of review, within each and every of the counties in the State of Indiana, save and excepting only the counties of Brown, Crawford, Dubois, Harrison, Ohio, Perry, Spencer and Switzerland, within the limits of which counties, eight in number, said defendant owned no property subject to taxation, and before the various township and county assessors in the various townships, that there was assessed against said defendant for the year 1893, taxes in the several counties in the respective amounts named below, after deducting all payments made by said defendant, that is to say:

3	In the county of Adams the sum of	$123.17
	In the county of Bartholomew the sum of	132.44
	In the county of Benton the sum of	313.92
	In the county of Blackford the sum of	115.00
	In the county of Boone the sum of	322.98
	In the county of Carroll the sum of	271.95
	In the county of Clark the sum of	170.89
	In the county of Clay the sum of	203.52
	In the county of Clinton the sum of	439.46
	In the county of Daviess the sum of	164.31
	In the county of Dearborn the sum of	140.08
	In the county of Decatur the sum of	213.69
	In the county of De Kalb the sum of	252.82
	In the county of Delaware the sum of	285.42
	In the county of Elkhart the sum of	347.61
	In the county of Fayette the sum of	136.00
	In the county of Floyd the sum of	00.00
	In the county of Fountain the sum of	462.19
	In the county of Franklin the sum of	131.63
	In the county of Fulton the sum of	256.66
	In the county of Gibson the sum of	160.70
	In the county of Grant the sum of	294.20
	In the county of Greene the sum of	249.83
	In the county of Hamilton the sum of	332.59
	In the county of Hancock the sum of	228.51
	In the county of Hendricks the sum of	288.63
	In the county of Henry the sum of	561.86
	In the county of Howard the sum of	168.09
	In the county of Huntington the sum of	154.96
	In the county of Jackson the sum of	358.78
	In the county of Jasper the sum of	315.28
	In the county of Jay the sum of	148.72
	In the county of Jefferson the sum of	61.13
	In the county of Jennings the sum of	215.14
	In the county of Johnson the sum of	43.15
	In the county of Knox the sum of	293.89
	In the county of Kosciusko the sum of	296.74
	In the county of La Grange the sum of	88.38

In the county of Lake the sum of	$670.72
In the county of La Porte the sum of	1,218.15
In the county of Lawrence the sum of	185.89
In the county of Madison the sum of	391.20
In the county of Marshall the sum of	388.71
In the county of Marion the sum of	313.66
In the county of Martin the sum of	89.58
In the county of Miami the sum of	332.92
In the county of Monroe the sum of	120.83
In the county of Montgomery the sum of	435.19
In the county of Morgan the sum of	127.30
In the county of Newton the sum of	234.75
In the county of Noble the sum of	235.10
In the county of Orange the sum of	118.58
In the county of Owen the sum of	150.99
In the county of Parke the sum of	291.54
In the county of Pike the sum of	47.65
In the county of Porter the sum of	558.57
In the county of Posey the sum of	307.38
In the county of Pulaski the sum of	154.02
In the county of Putnam the sum of	221.97
In the county of Randolph the sum of	233.44
In the county of Ripley the sum of	62.11
In the county of Rush the sum of	298.87
In the county of St. Joseph the sum of	681.83
In the county of Scott the sum of	70.75
In the county of Shelby the sum of	189.13
In the county of Starke the sum of	265.49
In the county of Steuben the sum of	152.75
In the county of Sullivan the sum of	241.15
In the county of Tippecanoe the sum of	850.35
In the county of Tipton the sum of	144.55
In the county of Union the sum of	70.96
In the county of Vanderburgh the sum of	249.92
In the county of Vermillion the sum of	117.47
In the county of Vigo the sum of	113.34
In the county of Wabash the sum of	366.58
In the county of Warren the sum of	249.35
In the county of Warrick the sum of	24.27
In the county of Washington the sum of	103.82
In the county of Wayne the sum of	427.30
In the county of Wells the sum of	213.01
In the county of White the sum of	239.88
In the county of Whitley the sum of	219.87
The total taxes so assessed against the defendant, exclusive of penalties but after deducting all payments made, in the several counties of the State amounting in the aggregate to	$20,925.21

That thereafter and subsequent to the levying and assessment of said taxes in the said several counties within the State, the same were in their respective counties, by the several auditors thereof, duly extended upon the proper tax duplicates, and the duplicates with the taxes so extended delivered by the respective auditors of said several counties on or about the 1st day of January, 1894, to the several treasurers of such counties for proceedings thereon, as required by law, and such duplicates were thenceforth continuously in the hands of such county treasurers until and since the third Monday in April, 1894, and it then and there was and thereby became the duty of the defendant to pay to the treasurers of said several counties the amounts so respectively levied and assessed against it for State, county and other purposes, as hereinbefore set forth, but the defendant, wholly unmindful of its duty in the premises, failed, neglected and refused to pay to said several county treasurers, or either or any of them, the taxes so levied and assessed against it in either, any or all of said counties, and also failed, neglected and refused to pay to said county treasurers, or either or any of them, the first installment thereof, as by the statutes in such cases made and provided they were at liberty to do, by reason whereof the whole of said taxes so levied and assessed against said defendant in each and every of the above-named counties became and were delinquent, and the penalty of 10 per cent., by reason of such delinquencies, became and was attached to the taxes so levied and assessed, and the same is now due and owing.

5 Plaintiff further avers that although the defendant has been often thereto requested, it has wholly failed, neglected and refused to pay said taxes so levied and assessed, or any part or parcel thereof, and the same now still remain due and uncollected, whereby a right of action has accrued to this plaintiff to have and recover of the defendant the full amount of said taxes, interest and said delinquent penalty of 10 per cent., together with the penalty of 50 per centum thereon as provided by the statute in relation thereto.

Plaintiff further avers that although said defendant owns and controls within the State of Indiana a large amount of property, real and personal, and although it is daily in the receipt of a large income derived from the carrying on of its business, and is abundantly solvent and able to pay the said taxes so levied and assessed against it, and although it has always refused, as aforesaid, and still fails and refuses to pay the said taxes so levied and assessed against it, yet its property, business, assets and incomes are of such a quasi-public character that the public interests may be jeopardized and interfered with in the event that the property owned and operated by it should be levied upon either by a sheriff or by the county treasurers, and the property so levied upon exposed to sale at either a sheriff's or treasurer's sale by reason of the possible interruption of its duties as a common carrier, and the sale of property necessary to its operation as such common carrier and in the discharge of the duties owing by it to the public, to this plaintiff and the Government of the United States, and it has therefore become and is neces-

sary that a receiver should be appointed upon the final hearing of this cause to take possession of the property owned, controlled and operated by said defendant within the State of Indiana, and to carry on the business of a telegraph company pending the collection of the amount so due to this plaintiff, and out of the receipts and income arising from the operation of said business, after defraying the operating expenses, to apply the surplus to the payment and discharge of the amounts so due on account of said taxes, and the penalties properly due from and chargeable against said defendant until the whole amount shall have been paid.

Wherefore plaintiff prays judgment against said defendant for the sum of ($75,000.00) seventy-five thousand dollars, for the appointment of a receiver to take possession and charge of the property, business and assets of said defendant within the State of Indiana, and to carry on said business under the direction of this court, applying the income and receipts arising therefrom to the payment of the operating expenses, and of the amount so due on account of said taxes and the penalties thereon until the same shall have been fully paid and discharged, and plaintiff prays for all further and proper relief.

ALONZO GREENE SMITH,
Att'y Gen'l.

LEON O. BAILEY,
WM. A. KETCHAM,
Of Counsel.

6 The complaint endorsed:

"The clerk will issue process against the defendant, returnable on the 18th day of May, 1894, being the 11th judicial day of the May term of the circuit court of Marion county, Indiana, for the year 1894, at which time the said defendant is required to appear and answer the within complaint."

ALONZO GREENE SMITH,
Attorney for the Plaintiff et al."

And afterwards, to wit, on the 7th day of January, 1895, being the first judicial day of the January term, 1895, of said court, before the Honorable Edgar A. Brown, sole judge of Marion circuit court, the following proceeding was had, that is to say:

"Comes now the plaintiff by counsel, and on its motion the defendant is ruled to answer the complaint herein by the 12th day of January, A. D. 1895."

And afterwards, to wit, on the 12th day of January, 1895, being the 6th judicial day of the January term of said court before the same honorable judge, the following proceedings were had herein:

"Comes now the defendant by counsel and files its answer to the complaint herein and the plaintiff is ruled to reply thereto by the 15th day of January, 1895."

Said answer is in the words and figures following, viz:

In the Marion Circuit Court.

STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Answer.

The defendant, The Western Union Telegraph Company, for answer to the complaint of The State of Indiana, plaintiff herein, says:

That it admits that it is a corporation organized under and by virtue of the laws of the State of New York, and that for a long time prior to the first day of April, 1893, and ever since continuously, it has been engaged in transmitting to, from, through, in and across the State of Indiana telegraphic messages, and that on said first day of April, 1893, it owned property in all the counties of the State of Indiana, except the counties of Brown, Crawford, Dubois, Harrison, Ohio, Perry, Spencer and Switzerland;

7 That it admits that the amounts alleged in the complaint to have been placed by the respective county auditors of the respective counties upon the respective tax duplicates of said counties as taxes for the year 1893 against the defendant were placed upon the respective tax duplicates of the respective counties by the respective county auditors as taxes for the year 1893 against it, as alleged in the complaint; and that the said duplicates containing the amounts so charged as taxes against defendant were delivered by the respective county auditors to the respective county treasurers on or about the first day of January, 1894;

That between the first day of April, 1893, and the first day of June, 1893, the defendant filled out and delivered to the township assessors of each township of the State of Indiana in which there was located on the first day of April, 1893, any property belonging to the defendant, an itemized list of all said property located in each township, and a statement of the value of each parcel of the same, sworn to by John F. Wallick, the district superintendent of the defendant, who was familiar with said property and its value, said list in all its respects conforming to the requirements of the statutes of Indiana relating to the listing of property by tax-payers;

That certain of said lists and valuations were changed and increased by the county boards of review of certain of the counties above mentioned, at their sessions in August, 1893;

That the defendant, prior to the third Monday of April, 1894, when the first installment of taxes became due, paid to the respective county treasurers of each of the eighty-four counties mentioned in the complaint herein, in which property of the defendant was located on the first day of April, 1893, the amounts claimed to be due as taxes on all the property of the defendant situated in each of the counties respectively which the respective county treasurers claimed was subject to local taxation; and as respects the property purported to be assessed by the State board of tax commissioners at

its session in 1893, the defendant paid to said respective county treasurers the amounts due as taxes reckoned upon the valuation stated in the lists filed by the defendant with the said respective county treasurers as changed by the proper assessing officers and county boards of review, which said amounts were received by the respective county treasurers of the respective counties on account of the taxes for the year 1893, which said amounts the defendant admits were justly due from it as taxes for the year 1893, said amounts so paid aggregating about $12,000;

That the aggregate of the amounts so paid by the defendant as taxes for the years 1892 and 1893 were substantially the same;

That there was no material change in the character of defendant's property in Indiana or in the conditions affecting its value between April 1, 1892, and April 1, 1893; nor during said period
8 was there more than a very slight increase in the amount of said property, to wit, an increase in amount of, to wit, 5 per cent.;

That defendant is and for many years last past has been the owner of a large amount and number of telegraph poles, lines, wires, cables, fixtures, instruments, machinery, appliances, apparatus and real estate, constituting a plant for the transmission and conveyance of telegraphic messages, which said telegraphic plant extends into and through every State and Territory of the United States, the Dominion of Canada and under the Atlantic ocean to England and to Cuba;

That defendant is also engaged in carrying on the business of receiving, transmitting and delivering telegraphic messages for hire, for the public generally, and for the Government of the United States, by requirement of law, using and occupying for the purpose of such business said telegraphic plant;

That defendant has entered into contracts with a great number of persons and corporations in the United States and throughout the world for the purpose of enabling it to economically construct and maintain its said telegraphic plant, which said contracts are now outstanding;

That defendant has also entered into contracts with various persons and corporations in the United States and throughout the world for the purpose of enabling it to carry on its business economically, and for the benefit of the public and of itself, which said contracts are now outstanding;

That defendant has further entered into contracts with various persons and corporations in the United States and throughout the world, whereby defendant is enabled to receive messages designed to be transmitted to points beyond its own lines and upon lines of other telegraph, telephone and cable companies in this country and in many foreign countries, which said contracts are still outstanding;

That partly by reason of the aforesaid contract rights as well as by reason of its possession, ownership and exercise of valuable patents issued by the Government of the United States, and of valuable franchises created by the governments of New York and other States of the United States, but not of Indiana, and by the governments

of England, of Cuba, and of numerous municipalities in such States, defendant is enabled to do a large and profitable business, by and by means of said telegraphic plant, and not only earn an amount which would be equivalent to rent upon said property, in case the same was owned by another corporation or leased by defendant, but also to make a profit for defendant in addition to said amount so applicable as rent of such telegraphic plant;

9 That a part of defendant's said telegraphic plant is situate within the State of Indiana, and that said portion of said telegraphic plant situated within the said State of Indiana, is of the actual cash value of $686,126.70, the said cash value being ascertained by taking the cost of original construction as nearly as the same can be ascertained and deducting therefrom a sum partially equal to the depreciation of said plant; and could be replaced by an entirely new plant of the same extent and location, and constructed of far more valuable and lasting material, for the sum of $1,226,625.78;

That prior to January 1, 1893, the said plant of defendant in the State of Indiana, was, by the statutes of Indiana, assessable in the same manner as property of other tax-payers, except that by a pretended statute of Indiana, approved March 6, 1891, which said pretended statute appears among the printed statutes of the State of Indiana, as section 69, page 99, of the Acts of 1891, a copy of which is hereto annexed, marked "Exhibit A," an income tax of one per cent. of the gross earnings of defendant in Indiana, whether from business originating and ending wholly within the State or from interstate business, was pretended to be imposed upon said income of defendant;

That prior to January 1, 1893, the said telegraphic plant of defendant in Indiana, was assessed in the same manner as the property of other tax-payers, upon tax-lists rendered by the defendant, for the purpose of said taxation, to the proper officers as required by law, showing the amount and value of its property in each county and township, excepting only that prior to January 1, 1893, the said telegraphic plant was attempted to be assessed differently from property of all other tax-payers in Indiana, in the following respect, to wit:

That the State of Indiana, by its auditor, claimed from defendant payment of said income tax, and that defendant, not admitting the legality of said tax, nor waiving its rights to have said statute declared unconstitutional and void, did, in the years 1891 and 1892, pay the State of Indiana a sum equal to one per cent. of its gross earnings from the business done by defendant within the State of Indiana, originating and wholly within the State;

That a session of the legislature of the State of Indiana
10 was duly held, in pursuance of the provisions of the constitution of Indiana, in the year 1893, which said session began by the terms of the constitution on Thursday, January 5, 1893, and expired by the terms of said constitution on Monday, March 6, 1893;

That on February 2, 1893, a bill entitled "A bill for an act sup-

plemental to and amendatory of an act entitled 'An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency,' approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight, joint stock associations, companies, copartnerships and corporations transacting business in the State of Indiana, repealing sections 68, 69, 70 and 71 of said act, and all laws in conflict therewith and declaring an emergency," which said bill is the same as the pretended statute of Indiana published by the authority of the State of Indiana as chapter 171 of the Acts of 1893 (such changes as appear by comparison of said bill and said act being such changes as were caused by the pretended amendments to said bill, and having reference to certain actions by the State of Indiana, which up to this time have not been taken or attempted to be taken, and hence not being involved in this litigation, for which reason said changes are immaterial to be herein described and set forth), was duly introduced in the house of representatives of the State of Indiana, the same being known and designated as house bill No. 431;

That said house bill No. 431 was duly passed by said house of representatives on February 24, 1893, and on said day transmitted to the senate of said State;

That the senate of Indiana did not pass said bill either in its original form or in an amended form prior to Saturday, March 4, 1893, at midnight, which said day was the last day upon which either house of the legislature of Indiana could constitutionally take action upon any bill pending before it excepting a bill which might theretofore have been presented to the governor for his approval;

That on Monday, March 6, 1893, the Hon. Claude Matthews, governor of Indiana, transmitted to the senate of Indiana, a message in the words and figures following:

11 "To the honorable the president of the senate:

"I desire to respectfully call the attention of the senate to two bills now pending before your honorable body. I refer to engrossed house bill No. 431, known as the sleeping car bill, and engrossed house bill No. 449, known as the general tax bill. These measures were carefully prepared by the State board of tax commissioners, and I am therefore conversant with their provisions. They are of the highest importance to the tax-payers of the State and have been drafted in a spirit of absolute fairness to all interests concerned and with the greatest regard for the decisions of the supreme court of this and other States. It is estimated one of these bills alone would probably add $25,000,000 worth of property to the tax duplicate, and which has heretofore almost, if not entirely, escaped its share of the public burden.

"For the for-going reasons I wish to most respectfully urge the passage of these tax bills without amendment or delay, and as to them suggest, that I am willing to waive my constitutional rights

and will receive and consider them, even if passed on the 6th day of March, 1893.

CLAUDE MATTHEWS, *Governor.*"

That after the receipt of said message on said Monday, March 6, 1893, the senate of Indiana took such action concerning said house bill No. 431 as would have effected the adoption of certain amendments by said senate to said bill and the passage of said bill, as so amended, and the transmission of the same to the house of representatives, if the said senate had in fact had the power or the authority under the constitution of Indiana to take any action whatsoever concerning said bill upon said day;

That afterwards on said Monday, March 6, 1893, the house of representatives of Indiana took such action as would have effected a concurrence of said house in the amendments of said senate and the passage of said amended bill by the house and the enrollment of said bill, if said house of representatives had had any power or authority under the constitution of Indiana to take any action whatsoever concerning said bill upon said day;

That afterwards on said Monday, March 6, 1893, said paper purporting as aforesaid to be enrolled house bill No. 431, was signed by Honorable James B. Curtis as speaker of the house of representatives, and by Honorable Mortimer Nye, as president of the senate;

That afterwards on said Monday, March 6, 1893, said paper purporting to be said enrolled house bill No. 431 was signed by the Honorable Claude Matthews, governor of Indiana;

That afterwards, said paper purporting to be said house enrolled act No. 431, signed as aforesaid, was deposited in the office of the secretary of state of Indiana, and was by said secretary of state caused to be published among the printed statutes of Indiana
12 passed by the legislature at its session in the year 1893, the same appearing as chapter 171 of the Acts of Indiana of 1893, printed by the authority of the State of Indiana;

That copies of said printed acts were duly published and circulated in the several counties of the State of Indiana, by authority of the State of Indiana, and the fact of such publication was announced and authenticated by the proclamation of the Honorable Claude Matthews, governor of Indiana, on May 18, 1893. (A copy of said pretended act is hereto annexed, marked "Exhibit B");

That a journal of the proceedings of the senate and house of representatives of Indiana at its session in the year 1893 was duly kept and published as required by the constitution and statutes of Indiana, and that the foregoing facts with relation to the passage of said pretended statute will appear from an inspection of said journals;

That, though advised by its counsel that said pretended statute is not a law of the State of Indiana, yet, for the purpose of performing all acts which might by possibility be claimed to be necessary for defendant to do in the performance of its equitable duties toward the State of Indiana, defendant not only caused to be prepared, signed, sworn to and filed in accordance with law its assessment-lists, showing its property in the various townships in the State of

Indiana for the purpose of taxation on April 1, 1893, and caused the same to be filed in the same manner and within the same time as other tax payers of Indiana are required to file assessment-lists, but also, not waiving any of the rights to contest the validity and constitutionality of said pretended statute and any assessment thereunder, but reserving to itself such rights, caused to be prepared, signed, sworn to and filed according to the terms of said pretended statute, with the auditor of the State of Indiana, the statement and return required by said pretended statute, verified by its proper officer, a copy of which said statement and return is hereto annexed, marked "Exhibit C;" and also, not waiving any rights to contest the validity and constitutionality of said statute heretofore described as section 69 of chapter 99 of the Acts of 1891, which said statute the said pretended statute of 1893 purports to continue in force, but insisting upon and reserving to itself said rights, duly filed with the auditor of State of Indiana, a statement, verified by its proper officer, showing the amount received by defendant in each county in the State from all the business of defendant originating and ending wholly within the State of Indiana, for the year prior to April 1, 1893, and duly paid to the treasurer of the State of Indiana on the 10th day of June, 1893, the sum of one thousand four hundred and fifty-four and fifty-five hundredths dollars ($1,454.55), the same being equal to 1 per cent. of the gross earnings of defendant in Indiana from business originating and ending wholly within the State of Indiana;

13 The State board of tax commis-ioners duly held a session as required by the statutes of Indiana, beginning on the 7th day of August, 1893, and ending and expiring on the 15th day of September, 1893;

That on the 25th day of August, 1893, said State board publicly announced and notified defendant that said board had, under the provisions of said pretended statute, assessed the property of the defendant in Indiana, deducting the real estate, structures, machinery and appliances within the State subject to local taxation, at the sum of two million two hundred and ninety-seven thousand six hundred and fifty-two dollars ($2,297,652.00) and at the rate of three hundred and fifty-seven dollars per mile of telegraph line;

That on the 15th day of September, 1893, said State board of tax commissioners duly caused to be recorded as their final action concerning the assessment of the property of defendant the foregoing valuation of two million two hundred and ninety-seven thousand six hundred and fifty-two dollars ($2,297,652.00), and three hundred and fifty-seven dollars ($357.00) per mile of telegraph line upon all the property of defendant in Indiana, excepting real estate, structures, machinery and appliances subject to local taxation, and duly signed said record as the final and absolute action of said board in this respect, and apportioned said valuation between the counties of the State in which the lines of telegraph of defendant are situated, and certified said valuation to John O. Henderson, as auditor of the State of Indiana, in compliance with the provisions of said pre-

was the real value of the shares or not; and that there is not, and from the nature of the case cannot be, any market price for all the shares of the stock of defendant;

That whether the price paid as aforesaid for said shares sold and speculated in as aforesaid on April 1, 1893, was the fair actual value of the shares sold, it is impossible for defendant to state, by reason of the fact that the stock-exchange prices for the shares of defendant's stock, whether upon actual or speculative sales, do not fairly represent the actual value of defendant's property; but, on the contrary, are largely influenced by speculation based upon elements entirely outside of defendant's property, earnings or future prospects, such as: Upon the state of national politics, upon the national financial policy and the certainty or uncertainty of what that policy may be in the future; upon the amount of shipments of gold abroad or the importations of gold; upon the stringency or ease of the local money market; upon the financial necessities of holders of defendant's stock, even upon rumors of insolvency of prominent financiers who may or may not be holders of defendant's shares; upon rapid declines in the market prices of shares of other companies; upon panicky conditions in financial centers at home and in Europe; upon the formation of pools and cliques to advance or depress the stock-exchange prices of the shares of stock of defendant, or even of the shares of other companies; and upon many other considerations which have no relation to the property or business of defendant, which said dependence of stock-exchange prices of the shares of stock of defendant upon considerations having no relation
16 to defendant's property or business is shown in a marked degree from the circumstances that between January 1, 1893, and May 1, 1893, the stock-exchange prices of the shares of stock of defendant fell from one hundred and one dollars ($101.00) per share to eighty dollars and twenty-five cents ($80.25) per share; and between April 1, 1893, and May 1, 1893, fell from ninety-four dollars and fifty cents ($94.50) per share to eighty dollars and twenty-five cents ($80.25) per share, during which period defendant avers that its said property and business were under substantially the same conditions as they had been for many years theretofore, and still are;

That during the past twelve years defendant has regularly paid a dividend; and that during said period its surplus earnings have not materially altered from year to year; and that during said period there has been a steady increase in value of defendant's tangible property; yet, during said period the stock-exchange prices for the shares of stock of defendant have varied in manner following, to wit:

In the year 1882 from	$76.13	to	$93.38.
In the year 1883 from	71.75	to	88.25.
In the year 1884 from	49.00	to	78.13.
In the year 1885 from	53.50	to	81.38.
In the year 1886 from	60.50	to	80.50.
In the year 1887 from	67.50	to	81.88.
In the year 1888 from	70.38	to	86.75.

In the year 1889 from 81.63 to 88.75.
In the year 1890 from 71.75 to 87.00.
In the year 1891 from 76.00 to 85.50.
In the year 1892 from 82.00 to 100.38.
In the year 1893 from 67.13 to 101.00.

That any price at which any or all shares of defendant might be sold, by any holder or holders thereof, whether such price be calculated upon any market value or upon actual value, includes, amongst other things, a consideration of franchises of great value owned or exercised by defendant, granted by the State of New York, by the United States, by Canada, by Great Britain, by Cuba, and by other States, countries and municipalities; a consideration of defendant's good will, its past earnings from every source, its probable future earnings from every source, the business ability, enterprise and skill of the present managers of defendant's business, the probable continuance of business ability, enterprise and skill in the future management of defendant's business; the contract and other relations of defendant to powerful railroad, telephone and cable companies; a consideration of the real estate of defendant situated in the city of New York, which is of great value, to wit, of the value of three million five hundred thousand dollars ($3,500,000); and in the city of Chicago, which is of great value, to wit: of the value of one million seven hundred thousand dollars ($1,700,000); and of the real estate of defendant of great value, situated in many other States and countries, none of which is situated in the State of Indiana; as
17 well as the consideration of the actual value of all defendant's telegraph lines, poles, wires, cables, conduits, instruments, appliances, and office furniture, including that which is situated in Indiana and taxable by the State of Indiana;

That in estimating such market or actual value of the shares of the stock of defendant, the values of said intangible franchises, rights, contracts, earnings, business, business ability, enterprise, skill and management and good will, and of all said real and personal estate of defendant are blended so as to render it impossible to separate and distinguish the portions of value applicable to any or each of said elements of value of said shares;

That defendant is the owner of many thousands of miles of telegraph in the States of Massachusetts, New York, Pennsylvania and New Jersey, and in other densely populated portions of the United States, which by reason of density of population, the great amount and extra quality and strength of wire and poles, the necessary use of underground conduits and cables, are of great cost and value, to wit: of the cost and value of two thousand and five hundred dollars ($2,500) per mile on the average, and require great expenditures for the maintenance thereof;

That defendant is the owner of many thousand miles of cable which lie under the high seas, which are of great cost and value, to wit: of the cost and value of three thousand five hundred dollars ($3,500) per mile on the average;

That defendant is the owner of many thousands of miles of lines of telegraph in uninhabited or sparsely inhabited portions of the

United States and Mexico, where there are little or no transportation facilities, which said lines, by reason of the cost of transportation of material and cost of maintenance are of great cost and value;

That all defendant's lines in the State of Indiana are under substantially the same conditions as to the cost of construction and maintenance, and that, by reason of the proximity to supplies of material and the very cheap transportation, defendant is able to and has constructed and maintained and does construct and maintain its said lines of telegraph at the minimum of cost, and that defendant's said telegraph lines in Indiana are of minimum value as compared with the lines of defendant situated elsewhere;

That, by reason of the facts aforesaid, the telegraph lines of defendant located outside of the State of Indiana are to such a large extent more costly and valuable than the telegraph lines of defendant within Indiana, that the average mile of the telegraph line of defendant within Indiana is of the value of to wit: forty (40) per cent. of the value of the average mile of the whole telegraph line of defendant situated outside of the State of Indiana, reckoning such value upon the cost of construction and maintenance and making allowance for deterioration;

18 That a very large portion, to wit: sixty-six (66) per cent. of all the business done by defendant in its conveyance of telegraphic messages as aforesaid is interstate and international business;

That a large portion, to wit: sixty (60) per cent. of all the business done by defendant within the State of Indiana is interstate and international business;

That the average net earnings of a mile of defendant's said telegraph line in Indiana amount to only a part, to wit: sixty (60) per cent. of the net earnings of the average mile of defendant's telegraph line outside of the State of Indiana;

That on —— —, 1867, defendant duly accepted the provisions of the act of Congress of July 24, 1866, (now sections 5263–5269 of the Revised Statutes of the United States);

That all the telegraph lines in the State of Indiana which defendant owns, leases or operates are erected and constructed upon the railroads, streets and other post-roads of the United States;

That by virtue thereof defendant is an agent of the Government of the United States in the transmission of intelligence by electricity from point to point within the State of Indiana, and from or to points without the State of Indiana to or from points within the State of Indiana, for the Government of the United States and for citizens thereof;

That said statute, if the same be a statute of Indiana, and the said assessment and valuation of defendant's said property under the provisions of said statute purported to be made by the State board of tax commissioners as aforesaid, render substantially valueless to defendant its said property in Indiana constructed upon the post-roads of the United States within the State of Indiana, and make it impossible for defendant to perform its functions under said act of Congress, and prevent defendant from performing its obligations to

the United States under said act of Congress, to the great injury of defendant and of the Government of the United States;

That a very large amount of the capital stock of the defendant, to wit: the amount of seven million six hundred and thirty-three thousand two hundred and thirty dollars and twelve cents ($7,633,230.12) is invested in and represented by the capital stock and bonds of other telegraph and telephone corporations, whose telegraph or telephone plants are leased to or operated by defendant, which said telegraph and telephone corporations possess no property in the State of Indiana, and do not own or use any franchise granted by the State of Indiana, and are wholly situated outside of the State of Indiana;

19 That the attempted and pretended valuation of defendant's said property by said State board of tax commissioners in manner aforesaid upon the value of defendant's shares of stock, whether said board pretended to value said property upon a basis which included the consideration or estimation of market value or actual value of the shares of stock of defendant, necessarily includes, and does in fact include, values which are no part of the true cash value of the property of defendant in Indiana, but are imputed and fictitious values distributed to defendant's said property in Indiana as portions of the value of the business, business ability, enterprise and skill of defendant, of the real and personal estate owned and leased by defendant and outside of the State of Indiana, and of defendant's franchises granted by States other than Indiana, and municipalities outside of Indiana, and by the United States and by foreign States and nations, and of the contract relations and other relations existing between defendant and other corporations, all of which said property, things in action and other things and matters of value are beyond the jurisdiction of the State of Indiana, whether for the purpose of taxation or for any other purpose;

That even if the State of Indiana possessed jurisdiction of said property, things in action and things and matters of value outside of Indiana, the State of Indiana possesses no jurisdiction of such portions of said property, things in action and things and matters of value, as are represented and caused by, and represent and cause, the earnings of defendant from its interstate commerce as aforesaid;

That at the same time that the said State board of tax commissioners made and determined upon said valuation of the said property of defendant of three hundred and fifty-seven dollars ($357.00) per mile of telegraph line in Indiana, under the authority of and pursuant to said pretended statute of March 6, 1893, they also made and determined upon the following valuations per mile of line in Indiana of the said property of the following-named telephone and telegraph companies owning lines and doing business in Indiana under the authority of and pursuant to said pretended statute of March 6, 1893, to wit:

Central Union Telephone Company, two hundred and fifty dollars ($250.00) per mile;

Postal Telegraph Cable Company, one hundred and seventy-five dollars ($175.00) per mile;

Cumberland Telegraph and Telephone Company, one hundred dollars ($100.00) per mile;

Grand Rapids & Indiana Railroad Telegraph Company, seventy-five dollars ($75.00) per mile;

Ohio Valley Telephone Company, seventy-five dollars ($75.00) per mile;

Cincinnati, Richmond & Ft. Wayne Railroad Telegraph Company, seventy-five dollars ($75.00) per mile;

Greensburg Telephone Company, fifty dollars ($50.00) per mile;

That all said companies are under substantially the same conditions with defendant with respect to cost of construction and maintenance of said telegraph property, and that all of said property upon the valuation based upon the cost of construction and maintenance, and making allowance for deterioration, is worth from fifty dollars ($50.00) to one hundred and ten dollars ($110.00) per mile of line, according to the quality and amount of material used in the construction thereof, and making reasonable allowance for deterioration;

That any value above the sum of one hundred and ten dollars ($110) per mile of line, placed upon any of said property, must have been, and in fact was, by said State board of tax commissioners, placed upon said property by reason of the fact that the companies owning said telegraph and telephone property are, at the present time, by reason of the business enterprise and ability of the managers of the business done upon and by means of all the telegraph and other property of said companies, and their allied and connected properties outside of Indiana, able to cause said companies to earn annually from their said business a greater amount than they would be obliged to pay as rent for all said property, were the same owned by persons or corporations other than themselves, which said valuations are, as compared with the valuation placed upon the property of other tax-payers in Indiana, unjust and not uniform or equal;

That John O. Henderson, auditor of the State of Indiana, in pursuance of said alleged and pretented statute, did, on said September 15, 1893, immediately subsequent to said adjournment of said State board of tax commissioners, certify said valuations to the respective county auditors of the respective counties as above mentioned, as being the counties through, across, into or over which the telegraph lines of the defendant extend;

That the telegraph lines of defendant extend through, across, into and over the said counties of Indiana;

That the said county auditors prior to January 1, 1893, apportioned and distributed said valuations so certified to them respectively by said John O. Henderson, as auditor of State, among the several townships in their respective counties, as provided by said alleged and pretended statute, and placed said valuations upon the tax duplicates of their respective counties as valuations chargeable upon and against defendant upon its property in Indiana and extended upon said duplicates as taxes against defendant for the year ending April 1, 1893, calculated upon such valuations, and delivered

said tax duplicates to the county treasurers of the said several counties respectively, to the end that said county treasurers might collect of and from defendant for the State of Indiana, for State, county, city, town and school purposes, the said pretended and
21 alleged taxes as aforesaid, assessed upon said valuations as aforesaid; which said alleged and pretended taxes are included in the amount sought to be recovered from the defendant in this action;

That the attempt to charge the defendant with the amount of said alleged taxes and the attempt to collect the same, in this action or in any other manner, is without authority of law, and in violation of law in this, to wit:

First. Because said pretended statute known and designated as chapter 171 of the Acts of 1893, has never been enacted as a statute of the State of Indiana, by reason of the fact that the General Assembly, in attempting to enact said pretended statute, acted in violation of article 5, section 14, of the constitution of the State of Indiana, which provides as follows: "No bill shall be presented to the governor within two days next previous to the final adjournment of the General Assembly," in this, to wit:

1. Said pretended statute, as it existed in the form of house bill No. 431, was passed by the senate and house of representatives of Indiana, and presented to the governor, within two days next previous to the final adjournment of the General Assembly;

Second. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment and valuation of defendant's said property made by the said State board of tax commissioners in compliance with the provisions of said pretended statute, are in violation of article 1, sections 1 and 12 of the constitution of Indiana, and section 1 of the 14th amendment of the Constitution of the United States, in that, by said pretended statute and assessment, defendant is deprived of its property without due process of law, said deprivation without due process of law consisting in this, to wit:

1. Said pretended statute, if the same has been enacted as a statute of the State of Indiana, requires said State board of tax commissioners to disregard cost of construction and real and intrinsic value as determining the value for taxation of defendant's said property in Indiana, and to place upon defendant's said property in Indiana a valuation which includes not only the real value of defendant's said property in Indiana, but also a value in addition to the real value of defendant's said property in Indiana proportioned to the value of defendant's business done upon and by the instrumentality of all of defendant's property; which said requirement of said pretended statute was in fact complied with by the State board
22 of tax commissioners in making the pretended assessment and valuation of said property of defendant in Indiana;

2. Said pretended statute, if the same has been enacted as a statute of the State of Indiana, requires a part of the value of defendant's said business to be added to the value of defendant's said property in Indiana, and thereby requires the said State board of

tax commissioners to assess property of defendant which is wholly outside of the State of Indiana and beyond the jurisdiction of said State; which said requirement of said pretended statute, if the same has been enacted as a statute of the State of Indiana, was in fact complied with by the State board of tax commissioners in making the pretended assessment and valuation of the said property of defendant in Indiana;

3. Said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust and uncertain rule for the taxation of the property of the defendant, since, though it requires a part of the defendant's property in Indiana to be assessed by the State board of tax commissioners, and a part of the local assessing officials, it fails to define the kinds of property of the defendant which are subject to assessment by the State board of tax commissioners and the kinds subject to assessment by the local taxing officials, thus attempting to grant to the State board of tax commissioners and to the local taxing officials powers which are strictly legislative in their character, and which may be exercised from year to year by the State board of tax commissioners and by the local assessing officials in a different and conflicting manner, and permitting the same property of the defendant to be assessed both by the State board of tax commissioners and by the local taxing officials, according as each may from year to year determine what kinds of the property of the defendant fall within its or their assessing jurisdiction;

4. Said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust rule for ascertaining the value of the property of defendant in Indiana other than that subject to local taxation, since, for this purpose, it requires the value of all the property of the defendant to be considered as equal to the aggregate of the market values of the stock and bonds, and distributed to Indiana on a mileage basis, excepting only real estate situated outside of Indiana, at its assessed value; whereas, if said rule is otherwise just and constitutional, it could be made just in this respect only by providing for the deduction of the actual value of all the property of the defendant, wherever situated, which does not directly subserve the operation of the telegraph plant of defendant, considered as a unit, or which is in the form of stocks, bonds, or other securities of corporations other than defendant;

23 Third. Because said statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment and valuation of defendant's said property made by said State board of tax commissioners in compliance with the provisions of said statute, are in violation of section 1 of the 14th amendment to the Constitution of the United States, in that by said pretended statute and assessment defendant is denied the equal protection of the laws in this, to wit:

1. That, by said pretended statute, if the same has been enacted as a statute of the State of Indiana, defendant is denied the protection and privilege accorded to all other persons in Indiana and secured to them by the constitution of Indiana of carrying on business,

both in and out side the State of Indiana, without being obliged to pay to the State of Indiana any portion of the income and profits of said business;

2. That by said pretended assessment and valuation defendant is denied the protection actually granted to certain telegraph and telephone corporations above mentioned of holding and owning telegraph and telephone property by paying taxes upon the value of the said property only, without any addition being made to the value of said property by reason of the business done by the managers of said property and by reason of ownership of or other relation to allied and connected properties outside of Indiana;

3. That said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust and uncertain rule for the taxation of the property of the defendant, since, though it requires a part of the defendant's property in Indiana to be assessed by the State board of tax commissioners and a part by the local assessing officials, it fails to define the kinds of property of the defendant which are subject to assessment by the State board of tax commissioners and the kinds subject to assessment by the local taxing officials, thus attempting to grant to the State board of tax commissioners and to the local taxing officials powers which are strictly legislative in their character, and which may be exercised from year to year by the State board of tax commissioners and by the local assessing officials in a different and conflicting manner, and permitting the same property of the
24 defendant to be assessed both by the State board of tax commissioners and by the local taxing officials, according as each may from year to year determine what kinds of the property of the defendant fall within its or their assessing jurisdiction;

4. That said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust rule for ascertaining the value of the property of defendant in Indiana other than that subject to local taxation, since, for this purpose, it requires the value of all of the property of the defendant to be considered as equal to the aggregate of the market values of the stock and bonds, and distributed to Indiana on a mileage basis, excepting only real estate situated outside of Indiana, at its assessed value; whereas, if said rule is otherwise just and constitutional, it could be made just in this respect only by providing for the deduction of the actual value of all the property of the defendant, wherever situated, which does not directly subserve the operation of the telegraph plant of defendant, considered as a unit, or which is in the form of stocks, bonds, or other securities of corporations other than defendant;

Fourth. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment of defendant's said property, are in violation of article 1, section 10, of the Constitution of the United States, which provides that no State shall, without the consent of Congress, lay any imposts or duties on imports, except what may be absolutely necessary for executing its inspection laws; and that the net produce of

all duties and imposts laid by any State on imports, shall be for the use of the Treasury of the United States, in this, to wit:

1. Said pretended statute, in effect, requires said State board of tax commissioners to treat the above-mentioned values of the things in action and property, real and personal, belonging to defendant, and not situated in or appropriable by the State of Indiana for purposes of taxation or for any other purpose, as though said values were, on said April 1, 1893, imported into the State of Indiana for the purpose of being valued for taxation; and said State board of tax commissioners followed the mandate of said pretended statute, and did, in fact, regard and treat said values as if the same were tangible objects imported into the State of Indiana on April 1, 1893, for the purposes of taxation, and did, in fact, value and assess such fictitious imports imputed to defendant for the purpose of taxation; and plaintiff is seeking to recover the amount claimed herein as duties and imposts for which defendant is claimed to be chargeable on account of the above-mentioned fictitious imports imputed to defendant; said pretended statute having been enacted, if it ever was enacted, without the consent of Congress, and said duties and imposts pretended to be imposed by said pretended statute on the above-mentioned fictitious imports imputed to defendant, not being absolutely necessary for executing any inspection laws of the
25 State of Indiana; and said statute not providing that the net produce of said duties and imposts laid on said fictitious imports imputed to defendant and other corporations and individuals affected by said statute, shall be for the use of the Treasury of the United States;

Fifth. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment of defendant's said property, are in violation of article 1, section 8, of the Constitution of the United States, in that they interfere with the right of Congress to regulate commerce with foreign nations and among the several States in this, to wit:

1. That said pretended statute, if the same has been enacted as a statute of the State of Indiana, purports to levy a tax on the interstate and international business and commerce carried on by defendant; and that by said pretended assessment a tax is attempted to be assessed upon the interstate and international business and earnings of defendant;

Sixth. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment of defendant's said property, are in violation of section 1 of article 10 of the constitution of Indiana, which provides as follows:

"The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such only, for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law," in this, to wit:

1. That said pretended statute, if the same has been enacted as a

statute of the State of Indiana, does not provide for a uniform and equal rate of assessment and taxation of defendant's property as compared with the property of other tax-payers in Indiana; and by said pretended assessment the said property of defendant in Indiana is assessed at an unequal and an ununiform rate as compared with the rate of assessment of all other tax-payers in Indiana;

2. That said pretended statute, if the same has been enacted as a statute of the State of Indiana, does not prescribe such regulations as secure the just valuation of defendant's property;

3. That said pretended statute, if the same has been enacted as a statute of Indiana, in effect imposes an income tax upon defendant under the guise of imposing an ad valorem tax upon said property of defendant in Indiana;

26 4. That said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust and uncertain rule for the taxation of the property of the defendant, since, though it requires a part of the defendant's property in Indiana to be assessed by the State board of tax commissioners, and a part by the local assessing officials, it fails to define the kinds of property of the defendant which are subject to assessment by the State board of tax commissioners and the kinds subject to assessment by the local taxing officials, thus attempting to grant to the State board of tax commissioners and to the local taxing officials powers which are strictly legislative in their character, and which may be exercised from year to year by the State board of tax commissioners and by the local assessing officials in a different and conflicting manner, and permitting the same property of the defendant to be assessed both by the State board of tax commissioners and by the local taxing officials, according as each may from year to year determine what kinds of the property of the defendant fall within its or their assessing jurisdiction;

5. That said pretended statute, if the same has been legally enacted as a statute of the State of Indiana, provides an unjust rule for ascertaining the value of the property of defendant in Indiana other than that subject to local taxation, since, for this purpose, it requires the value of all of the property of the defendant to be considered as equal to the aggregate of the market values of the stock and bonds, and distributed to Indiana on a mileage basis, excepting only real estate situated outside of Indiana, at its assessed value; whereas if said rule is otherwise just and constitutional, it could be made just in this respect only by providing for the deduction of the actual value of all the property of the defendant, wherever situated, which does not directly subserve the operation of the telegraph plant of the defendant, considered as a unit, or which is in the form of stocks, bonds or other securities of corporations other than defendant;

Seventh. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, is in violation of article 4, section 22, of the constitution of Indiana, which provides as follows: "The General Assembly shall not pass local or special

laws * * * for the assessment and collection of taxes for State, county, township and road purposes," in this, to wit:

1. That it is a law specially legislating concerning and against defendant and relates to the assessment and taxation of defendant's property;

Eighth. Because said pretended statute, if the same has been enacted as a statute of the State of Indiana, and the said pretended assessment of defendant's said property, are in violation of article 3, section 1, of the constitution of Indiana, which provides
27 as follows: "The powers of the government are divided into three separate departments; the legislative, the executive, including the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided," in this, to wit:

Said pretended statute purports to require the State board of tax commissioness to determine the kind and amount of property of defendant and the other corporations and individuals affected by said statute, which is subject to be taxed as a unit by the State board of tax commissioners having jurisdiction coextensive with the limits of the State, and also determine the kind and amount of personal property falling within the description of structures, machinery, fixtures and appliances owned by the defendant and the other corporations and individuals affected by said pretended statute and subject to local taxation within the State; thereby attempting to depute to the State board of tax commissioners a power strictly legislative in its character, and which under the constitution of Indiana, can be exercised by the General Assembly alone;

Defendant further says that on the 19th day of December, 1893, it brought suit in this court against Thomas Taggart, as auditor of Marion county, Indiana, and all the other county auditors and all the county treasurers of the counties of Indiana in which the defendant owned property, on April 1, 1893, to enjoin the collection of the alleged taxes herein sued for, and that on the 26th day of December, 1893, this court, in rendering its decree denying the injunction prayed for, granted an injunction pending the appeal of the case in the supreme court of Indiana, prohibiting the collection of taxes herein sued for; that such appeal was duly perfected and said injunction is now in force.

And defendant further says that it is abundantly solvent and able to pay the full amount claimed by the plaintiff at any time, and that it is ready and willing to promptly pay the same whenever the same shall have been finally adjudicated to be justly due from the defendant, together with penalties and interest, if penalties and interest shall be adjudicated to be due thereon, but that it is advised by its counsel that, for the reasons above set forth, said alleged taxes, beyond the amounts already paid by the defendant as aforesaid, are illegal and void, and that the defendant is not legally liable to pay the same; wherefore defendant avers that no reason for the appointment of a receiver for the defendant, either on preliminary or final hearing herein, exists, even though it should be adjudi-

cated that the amounts claimed herein are justly due from the defendant.

Wherefore defendant prays judgment for costs.

BUTLER, SNOW & BUTLER,
Attorneys for Defendant.

28 EXHIBIT A.

Acts of Indiana for 1891, *Chapter* 99.

An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency. (Approved March 6, 1891.)

SEC. 69. Any joint stock association or corporation engaged in transmitting to, from, through, or in this State telegraphic messages and incorporated under the laws of any other State, shall be deemed and held to be a telegraph company and every such telegraph company shall annually between the first day of April, and the first day of May, make and deliver to the auditor of State, a statement verified by the oath of the officer, or agent of such company making such report, showing the entire receipts of each agent of such company doing business in this State for the year then next preceding the first day of April for and on account of such company, including its proportion of gross receipts for business done by such company in connection with the lines of other companies: Provided, that nothing herein contained shall release such telegraph companies from the assessment and taxation of their tangible property in this State in the manner that other tangible property is assessed and taxed, such company in making statement of such receipts shall include as such all sums earned or charged of the business for such preceding year, whether actually received or not. Such statement shall contain an abstract of the amount received in each county and the total amount received for all the counties. In case of the failure or refusal of such telegraph company to make such statement before the first day of May, it shall then be the duty of each local agent of such local telegraph company within this State annually between the 1st day of May and the 1st day of June to make out and forward to the auditor of State a similar verified statement of the gross receipts of his agency for the year then next preceding the 1st day of April. When such statement is made such telegraph company shall at the time of making the same pay into the treasury of the State the sum of one dollar on each one hundred dollars of such receipts, and any such telegraph company failing or refusing for more than thirty days after the 1st day of June in each year to render an accurate account of its receipts in the manner above provided, and to pay the required tax thereon shall forfeit one hundred dollars for each additional day such statement and payment shall be delayed, to be recovered by an action in the name of the State of Indiana, on the relation of the auditor of State in any court of competent jurisdiction, and the attorney general shall conduct such prosecution, and such company, corporation or association so failing or refusing shall be prohibited from carrying on said business in this State until such payment is made.

29 EXHIBIT B.

Acts of Indiana for 1893, *Chapter* 171.

(Enrolled act No. 431—House.)

An act supplementary to and amendatory of an act entitled "An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency," approved March 6th, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freig-t, joint stock associations, companies, copartnerships, and corporations transacting business in the State of Indiana, repealing sections 68, 69, 70, and 71 of said act and all laws in conflict therewith, and declaring an emergency. (Approved March 6th, 1893.)

SECTION 1. Be it enacted by the General Assembly of the State of Indiana, That any joint stock association, company, copartnership, or corporation, whether incorporated under the laws of this State or of any other State or of any foreign nation, engaged in transmitting to, from, through, in or across the State of Indiana, telegraphic messages, shall be deemed and held to be a telegraph company, and every such telegraph company shall, annually, between the 1st day of April and the 1st day of June, make out and deliver to the auditor of State a statement verified by the oath of the officer or agent of such company making such statement with reference to the 1st day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding, and if said shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situated outside the State of Indiana
30 and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the dates and amount thereof.

Eighth. (*a.*) The total length of the lines of said association or company.

(*b.*) The total length of so much of their lines as is outside of the State of Indiana.

(*c.*) The length of the lines within each of the counties and townships within the State of Indiana.

SEC. 2. Every telephone company doing business in this State, whether incorporated under the laws of this State or of any other State, or of any foreign nation, shall annually, between the 1st day of April and the 1st day of June, make out and deliver to the auditor of State a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the 1st day of April next preceding, and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situate outside the State of Indiana, and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with dates and amounts thereof.

Eighth. (*a.*) The total length of the lines of said association or company.

(*b.*) The total length of so much of their lines as is outside the State of Indiana.

(*c.*) The length of the lines within each of the counties and townships within the State of Indiana.

31 SEC. 3. Every joint stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other State, or any foreign nation engaged in conveying to, from, through, in or across this State, or any part thereof, money, packages, gold, silver, plate, merchandise, freight or other articles, under any contract, express or implied, with any railroad company, or the managers, lessees, agents or receivers thereof, provided such joint stock association, company, copartnership or corporation is not a railroad company, shall be deemed and held to be an express company within the meaning of this act, and every such express

company shall annually, between the 1st day of April and the 1st day of June, make out and deliver to the auditor of State a statement, verified by the oath of the officer or agent of such association, company, copartnership or corporation making such statement with reference to the first day of April next preceding, showing:

First. The total capital stock or capital of said association, company, copartnership, or corporation.

Second. The number of shares of capital stock issued and outstanding and the par or face value of each share, and, in case no shares of capital stock are issued, in what manner the capital thereof is divided and in what manner such holdings are evidenced.

Third. Its principal place or business.

Fourth. The market value of the said shares of stock on the 1st day of April next preceding, and if such shares have no market value, then the actual value thereof; and in case no shares of stock have been issued, state the market value, or the actual value in case there is no market value, of the capital thereof, and the manner in which the same is divided.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with improvements thereon, owned by said association, company, copartnership or corporation, situate outside the State of Indiana, and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

32 Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (*a.*) The total length of the lines or routes over which such association, company, copartnership or corporation transports such merchandise, freight, or express matter. (*b.*) The total length of such lines or routes as are outside the State of Indiana. (*c.*) The length of such lines or routes within each of the counties and townships within the State of Indiana.

SEC. 4. Every joint stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other State, or of any foreign nation, and conveying to, from, through, in or across this State, or any part thereof, passengers or travelers in palace cars, drawing-room cars, sleeping cars, dining cars or chair cars, under any contract, express or implied, with any railroad company or the managers, lessees, agents or receivers thereof, shall be deemed and held to be a sleeping car company for the purposes of this act; and every such sleeping car company doing business in this State shall, annually, between the 1st day of April and the 1st day of June, make out and deliver to the auditor of State a statement, verified by oath of the officer or agent of such

company making such statement, with reference to the 1st day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the 1st day of April next preceding, and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures, and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specified real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situate outside the State of Indiana, and not used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the franchises and amounts thereon.

Eighth. (*a.*) The total length of the main lines of all the railroad companies over which said cars are run.

33 (*b.*) The total length of so much of the main lines of the railroad companies over which said cars are run as is outside the State of Indiana.

(*c.*) The length of the lines of said railroad companies over which said cars are run within each of the counties and townships within the State of Indiana: Provided, that where the railroads, over which said lines are run, have double tracks or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but a single track, and in case the auditor of State shall require it, such statement shall show in detail the number of miles of each or any particular railroad system or division.

SEC. 5. Upon the filing of such statements the auditor of State shall examine them, and each of them, and if he shall deem the same insufficient, or in case that he shall deem that other information is requisite, he shall require such officer to make such other and further statements as said auditor of State may call for. In case of the failure or refusal of any association, company, copartnership or corporation to make out and deliver to the auditor of State any statement or statements required by this act, such association, company, copartnership or corporation shall forfeit and pay to the State of Indiana one hundred dollars ($100) for each additional day such report is delayed beyond the first day of June, to be sued and recovered in any proper form of action, in the name of the State of Indiana, on the relation of the auditor of State, and

such penalty, when collected, shall be paid into the general fund of the State.

SEC. 6. Upon the meeting of the State board of tax commissioners for the purpose of assessing railroad and other property, said auditor of State shall lay such statements, with such information as may have been furnished him, before said board of tax commissioners, who shall thereupon value and assess the property of each association, company, copartnership or corporation in the manner hereinafter set forth, after examining such statements and after ascertaining the value of such properties therefrom, and from such other information as they may have or obtain. For that purpose they may require the agents or officers of said association, company, copartnership or corporation to appear before them with such books, papers or statements as they may require, or they may require additional statements to be made to them, and may compel the attendance of witnesses in case they shall deem it necessary to enable them to ascertain the true cash value of such property.

34 SEC. 7. Said State board of tax commissioners shall first ascertain the true cash value of the entire property owned by said association, company, copartnership or corporation from said statements or otherwise, for that purpose taking the aggregate value of all the shares of capital stock, in case said shares have a market value, and in case they have none, taking the actual value thereof or of the capital of said association, company, copartnership or corporation, in whatever manner the same is divided, in case no shares of capital stock have been issued: Provided, however, that in case the whole or any portion of the property of such association, company, copartnership or corporation shall be incumbered by a mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock or to the value of the capital, in case there shall be no such shares, the aggregate amount of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, copartnership or corporation. Such board of tax commissioners shall, for the purpose of ascertaining the true cash value of the property within the State of Indiana, next ascertain, from such statements or otherwise, the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situated without the State of Indiana and not specifically used in the general business of such associations, companies, copartnerships or corporations, which said assessed values for taxation shall be by said board deducted from the gross value of the property as above ascertained. Said State board of tax commissioners shall next ascertain and assess the true cash value of the property of such associations, companies, copartnerships or corporations within the State of Indiana, by taking the proportion of the whole aggregate value of said associations, companies, copartnerships or corporations, as above ascertained, after deducting the assessed value of such real estate without the State, which the length of the lines of said associations, companies, copartnerships or corporations, in the case of telegraph and tele-

phone companies within the State of Indiana, bears to the total length of the lines thereof; and in the case of palace, drawing-room, sleeping, dining or chair car companies, the proportion shall be the proportion of such aggregate value, after such deductions, which the length of the lines within the State, over which said cars are run, bears to the length of the whole lines over which said cars are run; and in the case of express companies, the proportion shall be the proportion of the whole aggregate value, after such deductions, which the length of the lines or routes within the State of Indiana, bears to the whole length of the lines or routes of such associations, companies, copartnerships or corporations, and such amount so ascertained shall be deemed and held as the entire value of the property of said associations, companies, copartnerships or corporations within the State of Indiana.

From the entire value of the property within the State so ascertained, there shall be deducted by said board the assessed value for taxation of all the real estate, structures, machinery and appliances within the State and subject to local taxation in the counties and townships, as herein described in item No. 5 of sections 1, 2, 3 and 4 of this act, and the residue of such value so ascertained, after deducting therefrom the assessed value of such local properties, shall be by said board assessed to said association.

SEC. 8. Said State board of tax commissioners shall thereupon ascertain the value per mile of the property within the State by dividing the total value, as above ascertained, after deducting the specific properties locally assessed within the State, by the number of miles within the State, and the result shall be deemed and held as the value, per mile, of the property of such association, company, copartnership or corporation within the State of Indiana.

SEC. 9. Said State board of tax commissioners shall thereupon, for the purpose of determining what amount shall be assessed by it to said association, company, copartnership or corporation in each county in the State through, across, into or over which the line of said association, company, copartnership or corporation extends, multiply the value per mile, as above ascertained by the number of miles in each such counties, as reported in said statements, or as otherwise ascertained, and the result thereof shall be, by said board, certified to the auditor of State, who shall thereupon certify the same to the auditors, respectively, of the several counties through, into, over or across which the lines or routes of said association, company, copartnership or corporation extend, and such auditors shall apportion the amount certified for their counties, respectively, among the several townships into, through, over or across which such lines or routes extend, in proportion to the length of the lines in such townships.

SEC. 10. To enable said county auditors to properly apportion the assessments between the several townships, they are authorized to require the agent of said association or company to report to them, respectively, under oath, the length of the lines in each township, and the auditor shall thereupon add to the value, so apportioned, the assessed valuation of the real estate, structures, machinery,

fixtures and appliances situated in any township and extend the taxes thereon upon the duplicates as in other cases.

SEC. 11. In case any such association, company, copartnership or corporation, as named in this supplemental and amendatory act, shall fail or refuse to pay any taxes assessed against it in any county or township in the State, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the State of Indiana by the prosecuting attorneys of the different judicial circuits of the State on the relation of the
36 auditors of the different counties of this State, and the judgment in said action shall include a penalty of 50 per cent. of the amount of taxes so assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over or across which the line or route of any such association, copartnership, company or corporation shall extend, or in any county where such association, company, copartnership or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership or corporation shall have refused to pay the whole of the taxes assessed against the same by said State board of tax commissioners, or in case such association, company, copartnership or corporation shall have refused to pay the taxes, or any portion thereof, assessed to it in any particular county or counties, township or townships, such action may include the whole or any portion of the taxes so unpaid in any county or counties, township or townships, but the attorney general may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions in each separate county or township, or join counties and townships, as he may prefer.

All collections of taxes for or on account of any particular county made in any such suit or suits shall be, by said auditor of State, accounted for as a credit to the respective counties for or on account of which such collections were made by said auditor of State, at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the State; and upon such settlement being made, the treasurers of the several counties shall at their next settlements, enter credits upon the proper duplicates in their offices, and at the next settlement with such county report the amount so received by him in his settlement with the State, and proper entries shall be made with reference thereto: Provided, however, that in any such action the amount of the assessment fixed by said State board of tax commissioners and apportioned to such county, or apportioned by the county auditor to any particular township, shall not be controverted.

37 SEC. 12. Inasmuch as the provisions of this act are intended to take the place of sections 68, 69, 70 and 71 of the act entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved March 6, 1891, such sections and each of them, and all other laws and parts of laws in conflict with this act are hereby repealed: Provided, that all moneys now due the State, or which may become due on

the first day of April, 1893, or at any other time, on account of any assessment or charge made against any of the joint stock associations, persons, companies or corporations on account of per cents on gross or net earnings for the preceding year or years, and all penalties and charges thereon, growing out of any failure to make reports or payments, as now required by the provisions of the aforesaid repealed sections, shall be paid and collected under the provisions of said repealed sections the same as if said sections were not repealed, and any suit brought for the recovery of such money, taxes or penalties, shall be begun under the provisions of said repealed sections and prosecuted to final judgment thereunder, in all respects the same as if said sections were continued in full force; and it is hereby expressly provided that all the rights of the State accrued, or which may accrue, on the first day of April, 1893, on account of receipts for the preceding years are hereby saved from the operation of the aforesaid repealing clause.

SEC. 13. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in force from and after its passage.

EXHIBIT C.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the Western Union Telegraph Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total capital stock. (See page 1 of annexed statement.)

Item 2. Number of shares of capital stock issued and outstanding. (*a.*) Par or face value of each share. (See page 1 of annexed statement.)

Item 3. Principal place of business. (See page 1 of annexed statement.)

Item 4. Market value of shares of stock on the 1st day of April, 1893. (*a.*) If shares have no market value then state actual value thereof. (See page 1 to 4 of annexed statement.)

38 Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation. (See Schedule B, attached to annexed statement.)

Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation situate outside of the State of Indiana, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated. (See Schedule A, attached to the annexed statement.)

Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz: (See pages 10 and 11 of annexed statement.)

Item 8. (*a.*) Total length of the main lines of all the railroad companies over which cars are run. (*b.*) Total length of so much of the main lines of the railroad companies, over which said cars are run, as are outside the State of Indiana. (*c.*) Total length of the lines of said railroad companies, over which said cars are run, within each of the counties and townships in the State of Indiana. (See page 4 of annexed statement; see Schedule B attached to annexed statement and note on page 12 of annexed statement.)

INDIANAPOLIS, *July* 11, 1893.

To the auditor of the State of Indiana:

The Western Union Telegraph Company, a corporation organized under the laws of the State of New York and owning and operating lines of telegraph in the State of Indiana, protesting that the supposed act of March 6, 1893, is invalid and void under the constitution of the State of Indiana and that of the United States, and that it is not obliged by law to make any report thereunder to the auditor of State, respectfully submits the following in compliance with the request of the auditor of State and only out of respect to that officer and the State board of tax commissioners:

On the 1st day of April, 1893, said corporation had its principal place of business at 195 Broadway, New York city, but had a principal office for the State of Indiana at 19 South Meridian street in the city of Indianapolis. Upon that day the total capital stock of the company, issued and then outstanding, was $94,820,000, consisting of 948,200 shares of $100 each, par value.

39 On the 1st day of April, 1893, there was no market value for all the shares of the company's stock. The total number which was sold or speculated in on that day on the New York stock exchange amounts to 1,168 shares, at prices ranging from $94.25 to $94.75 per share. Of these shares dealt in on the New York stock exchange, only a small number were actually delivered by the sellers to the purchasers, the remaining transactions having cancelled each other through the clearing-house of the New York stock exchange without the delivery or transfer of shares. It was impossible on that day or upon any other day since to sell all the shares of the stock of the said company for such prices or any other approximating thereto, whether such price was the real value of the shares or not. There is, and from the nature of the case can be, no market price for all the shares of stock of the company.

Whether the price paid on April 1, 1893, was the fair actual value of the shares sold it is impossible for the company's officers to state. Such stock-exchange prices, whether of speculative or actual sales, do not fairly represent the actual value of the company's property. Such exchange prices are largely influenced by speculation based upon elements entirely outside of the company's property, earnings or future prospects—for instance, upon the state of national politics,

upon the national financial policy and the certainty or uncertainty of what the policy may be in the future, upon the amount of shipments of gold abroad or the importations of gold, upon the stringency or ease of the local money market, upon the financial necessities of holders of the company's stock, even upon rumors of insolvency of prominent financiers who may or may not be holders of the company's shares, upon rapid declines in the market prices of shares of other companies, upon panicky conditions in financial centers at home or in Europe, upon the formation of pools or cliques to advance or depress the stock-exchange prices of these shares or even of other shares, and upon many other considerations which have no relation to the company's business. This is shown in a marked degree from the circumstances that between the first day of January last and the first of May last the stock-exchange prices of the company's shares fell from 101 to 80¼, and even in the month of April fell from 94½ to 80, falling with the same rapidity as they had within several months advanced.

Any movements on the stock exchange of prices, both down and up, were without reference to the value of the company's property or of its future prospects or its present or future business, all of which were stable and have been so for many years. During the past twelve years, in which the company has regularly paid a dividend, and in which its surplus earnings have not materially altered from year to year, in which there was a steady increase in value of the company's actual property, the stock-exchange prices have varied as follows:

40	1882	76⅛	to	94⅜
	1883	71¾	to	88¼
1884		49	to	78⅛
1885		53½	to	81⅜
1886		60½	to	81½
1887		67½	to	81⅞
1888		70⅜	to	86¾
1889		81⅝	to	88¾
1890		71¾	to	87
1891		76	to	85½
1892		82	to	100⅜
1893 to May 1		80¼	to	101

This company declares that any price of the shares, whether market value or actual value, includes, amongst other things, a consideration of the company's franchises owned or exercised by it, granted by the State of New York, by the United States of America, by Canada, by Great Britain, by Cuba, and by other States and countries; a consideration of the company's good will, its probable future earnings, its present management and its prospective management, its contract or other relations to powerful railroad and telephone and cable companies, each and all of very great value to the company, but none of which elements is the subject of taxation by the State of Indiana, as well as a consideration of the actual value of its property, real or personal, including that which is

situated in the State of Indiana and taxable by it; that in estimating such market or actual value of the shares, the value of such real or personal property of the entire system of the company or that situated in the State of Indiana, cannot be distinguished from the value of such intangible franchises, rights, contracts, management and good will, and that any attempt upon the part of the State of Indiana to value the company's entire property, or that which is situated in the State of Indiana, upon the basis of any market or the actual value of the shares, will necessarily include a value of the said franchises, rights, contracts, management and good will, all of which are beyond the jurisdiction of the State, and any taxation thereof by the State of Indiana would be null and void.

The whole length of the lines of this company whether owned, leased or controlled through the ownership of shares of other companies, including those extending into and through Canada, and under the high seas to Cuba and England is 189,576 miles and the length of such lines in the State of Indiana was 6,436.7 miles.

41 This company represents however, that a fair valuation of its property in the State of Indiana, which consists entirely of its telegraph lines and appurtenances cannot be ascertained even approximately by applying the proportion which such mileage of line in Indiana (6,436.7 miles) bears to the entire mileage of the company (189,576 miles) upon a valuation of all the shares of the company's stock whether such valuation be stock-exchange value or the actual value of such shares, because such valuation includes elements of value not existing within the State of Indiana, or not taxable by it as stated aforesaid, and also because the lines of telegraph possessed by this company in and out of the State of Indiana, are not of uniform value per mile and that any valuation of the company's lines in Indiana, upon the basis of a uniform value per mile of all the company's lines would be a great injustice to this company and would result practically in double taxation of the company's property.

The value of the lines of this company within the State of Indiana, if made upon the basis of the actual cost, less depreciation, will not exceed $686,126.70, but if it should be made upon the basis of the cost of reproduction of an entirely new line of the same extent and location, it would be $1,266,625.78.

This is apparent from the following facts: The standard size of poles in Indiana is 25 feet long, costing delivered from 50 cents to $1.20, according to the kind of timber. White cedar largely predominates and costs about $1.20. In cities and towns, poles ranging from 30 to 55 feet in length are used, but the proportion of long poles, compared with those which are 25 feet long, is very small. A fair average cost of poles with fixtures would not exceed $1.60 each. The labor required to set them in the ground and attach the cross arms thereto will not average more than $1.00 per pole, of which there are 33 to the mile.

The standard size of No. 8 wire weighs 380 pounds to the mile, and costs with freight added 4½ cents per pound, making the cost

per mile of wire equal $17.10. The cost for stringing the wire on poles averages $4.00 per mile. A set of instruments costs $6.50 upon the average.

Upon this basis the full value of the company's plant in Indiana, should it be reconstructed entirely new of the same extent and location, would be as follows:

6,436.7 miles of poles at $85.80 per mile	$542,168 86
32,257.2 miles of wire at $21.10 per mile	682,736 92
Sets of instruments at $6.50 / Office furniture	26,720 00
Miscellaneous items	15,000 00
	$1,266,625 78

42 This valuation is far in excess of the actual value of the existing plant, considered as property. The existing lines have been largely constructed under contract with the railroad companies for joint use, the telegraph company furnishing the material and the railroad company the labor. As the average life of a telegraph pole is from 12 to 15 years, and a large portion of the line in Indiana is old, requiring replacement in a few years at a high cost, it is apparent that the present plant is not of the value of a new one.

While the cost per mile in the State of Indiana or in any other State can be averaged with substantial accuracy, because the conditions existing there are substantially uniform, no such rule can apply to the company's lines as a whole. Thousands of miles of line lie in cables under the high seas, costing between $3,000 and $4,000 per mile. In the more densely settled portions of the country, like Massachusetts, New York, Pennsylvania and New Jersey, where also the company's main trunk lines are larger, the cost per mile of line is vastly greater than the average cost per mile of line—the company possessing thousands of miles of line there which cost fully $2,500 per mile.

The company also has a large mileage of line laid under ground in conduits, in which the cost is much greater than the average per mile of its system. In the far West of the United States the necessity to transport poles and wires from the East for a great distance adds largely to the cost per mile of line, and many thousands of miles of line have there been built in advance of the railroad and at a great cost for transportation by wagon across the plains and mountains, making the rate there far beyond the average.

Besides the elements of Federal and foreign franchise, contracts, patent rights and business skill entering into the value of the shares of stock as hereinbefore set forth, this company has large investments in bonds and stocks of other corporations, principally telephone companies and local telegraph companies, of an aggregate value of $7,633,230.12, none of which are of corporations of the State of Indiana, and it also has large investments in real estate in New York city and Chicago, and other cities and towns in the United States and Canada, none of which are in Indiana; the cost of which

was $5,013,326.64. as per Schedule A hereto attached. It is impossible to state to what extent this real estate is directly used in the conduct of the business of the company. Each piece of property is in some degree used for the company's business, but it is not all exclusively used for that purpose. The large office buildings in New York city and in Chicago are only partially used for the company's business, the remainder of it being rented to tenants as any other property of that character. The said schedule also sets forth the assessed valuation of each of these pieces so far as the company's books show them. Some of them are exempt from taxation by local law, others are for local reasons assessed much below their actual value.

43 Any apportionment to Indiana of the company's capital stock on the mileage basis will necessarily include the value of such shares, bonds, real estate, franchises, contracts and patent rights, all of which are outside the jurisdiction of the State of Indiana.

As a further proof that the mileage basis does not correctly indicate the value of the company's property in Indiana, the company shows that while the gross receipts from the company's business throughout its entire system average $32.00 per mile of wire, in Indiana the average is $14.00 per mile of wire, and that the net earnings of the entire system average $10.00 per mile of wire, but in Indiana do not exceed $4.00 per mile of wire.

As a further proof to the same end the company shows that if the entire capital of the company be taken at the stock-exchange prices of April 1st last—say 94½ per cent.—and if the apportionment thereof to the State of Indiana upon the mileage basis above set forth be taxed at an average rate of 2 per cent. (which is probably the average rate of taxation in Indiana,) it would require the company to pay a tax in this State of about $60,000.00. As the net earnings of the company from all its business in the State of Indiana, whether from interstate or local traffic, do not exceed the sum of $120,000.00, it appears that a tax upon such mileage basis would equal 50 per cent. of the entire income of the company's property in the State, which is a rate of taxation unheard of, grossly unequal and substantially destructive.

The company further represents that on ——, 1867, it formally accepted the provisions of the act of July 24, 1866, (now sections 5263–5269 of the Revised Statutes of the United States), that all the telegraph lines in the State of Indiana which it owns, leases or operates are erected and constructed upon the railroads, streets and other post-roads of the United States. That by virtue thereof this company is an agent of the Government of the United States in the transmission of intelligence by electricity from point to point within the State of Indiana and from or to points without the State of Indiana, to or from points within the State of Indiana for the Government of the United States and for citizens thereof; that the enforcement of this scheme of taxation provided in the supposed law of the State of Indiana approved March 6, 1893, will substantially destroy the value of the property of this company in

the State of Indiana constructed upon such post-roads and operated by this company in the performance of its functions under the said act of Congress and thereby prevent it from the due performance of its obligation thereunder.

44 Schedule B hereto attached is a statement of the lines, machinery, fixtures and appliances owned by the said company within the State of Indiana, and the location thereof in each county or township. The company has no other real estate or personal property subject to local taxation than set forth in said schedule.

The company has but one mortgage upon the whole or any part of its property, which mortgage was made to secure what are known as the building bonds maturing May 1, 1902, bearing 7 per cent. interest. The amount outstanding is $1,211,000, but there is in the hands of the trustee for its bondholders a sinking fund accumulation paid by the company of $378,515.89. This mortgage is upon the real estate of the company situated at the corner of Broadway and Dey streets, in New York city, and does not cover any other property. The company protesting that by the terms of said pretended statute it is required to report only the mortgages or mortgage bonds, but inasmuch as the auditor of the State of Indiana has requested the company to report its other bonds not secured by mortgage, of courtesy to that officer it states these bonds which are as follows:

1. Sterling bonds due March 1, 1900, rate of interest 6 per cent., amount outstanding $831,060, with a sinking fund in the hands of the trustee of $10,088. There is no mortgage or other security for these bonds, they are simply debentures.

2. Currency bonds due May 1, 1900, interest 7 per cent., amount outstanding, $4,920,000. There is no security for these bonds, they are simply debentures.

3. Collateral trust bonds, due January 1, 1938, rate of interest 5 per cent.; amount outstanding $8,288,000. There is no sinking fund. These bonds have been issued for the purpose of acquiring some securities, to wit: bonds and shares of some of the telegraph companies whose lines have been leased by the Western Union Telegraph Company, at a fixed rental equal to at least six per cent. upon the par of such bonds or shares. The shares and bonds of such leased telegraph companies were in exchange for said collateral trust bonds delivered to the trustee, and are held by it as a security for the collateral trust bonds of this company. Such bonds and shares so acquired by the trustee equal to $8,288,000. None of these bonds and shares have been included among the investments in bonds and stocks of other companies owned by this company hereinbefore mentioned as having an aggregate value of $7,633,230. The lines of said leased companies whose bonds and shares have thus been acquired by the trustee for the collateral trust bondholders are included in the mileage of this company hereinbefore mentioned.

(NOTE.—The requirement mentioned in item 8, (*c*) of section 1, of the tax law of 1893, (item 8, *c*, of the form of annual return),
45 is complied with by the company by "Schedule B" annexed

hereto, in so far as the statute requires information concerning the length of lines in the different counties in the State of Indiana, in which the lines of the company are located. The company will also furnish the State board with information concerning the mileage in the respective townships, if it is desired, but the company submits that it ought to be relieved from its obligation to furnish this latter information to the State board for the reason that the company has, since April 1, 1893, made out township tax-lists covering all its property in each township, and has sent these lists to the county auditor- of the counties in which the townships are situated. These township lists give the length of lines in each township. The State auditor has no duties with respect to townships, his duty being merely to distribute between counties by section 9, of the tax law of 1893, and the county auditors distributing between townships.

To require the company, under the circumstances, to furnish information to the board would be to require it to furnish this information a second time for the purpose of enabling the State auditor to do that which the company has already done for him, viz: to inform the county auditors of the mileage in the townships.)

"SCHEDULE A."

Real Estate of the Western Union Telegraph Company.

Location.	Cost, per ledger.	Assessed value.
Broadway and Dey street, New York	$2,823,039 52	$1,500,000 00
Fifth avenue and Twenty-third street, New York	202,524 74	290,000 00
16 and 18 Broad street, New York	191,518 77	300,000 00
Fifty-fifth street, New York	20,384 43	2,000 00
Chicago	1,500,000 00	165,000 00
Estimated improvements	200,000 00	
Chicago boulevard	2,500 00	590 00
Philadelphia	30,866 67	36,000 00
Sacramento, Cal.	5,500 00	4,700 00
Plaister Cove, C. B.	2,120 91	
Sandy Hook, N. J.	7,349 62	
Highland, N. J.	3,463 00	
Avila, Cal.	173 68	
Cisco, Cal.	60 00	
North Sydney, C. B.	4,040 00	
Petersburg, Pa.	150 00	
Ashe Bay, N. S.	501 50	
White River Junction, Vt.	443 34	
Signal station, Cape Henlopen	750 00	
46		
Cape Canso, N. S.	12,196 23	
Pt. Hastings, C. B.	1,001 65	
Fire Island observatory	3,370 50	
Marine building, Sandy Hook	1,372 08	None.
Total	$5,013,326 64	

"SCHEDULE B."

	Miles of poles.	Miles of copper wire.	Miles of galvanized wire.	Miles of plain wire.	Total miles of wire.	Value of instruments and office furniture.
Adams	34.3	14.2	85.2	.....	99.4	895
Allen	145.9	107.4	1,075.9	25.6	1,208.9	855
Bartholomew	53.2	.....	295.2	26.5	321.7	210
Benton	93.7	.....	512.9	28.6	541.5	345
Blackford	27.1	.....	74.5	.....	74.5	70
Boone	104.7	.....	316.9	57.4	374.3	240
Carroll	120.2	.....	382.8	.....	382.8	210
Cass	163.7	33.1	608.4	.....	641.5	945
Clark	66.2	24.3	430.1	24.6	479.0	325
Clay	56.4	.....	225.5	31.5	257.0	175
Clinton	128.5	.....	365.6	34.2	399.8	540
Daviess	45.7	.....	211.3	.....	211.3	110
Dearborn	42.5	20.3	265.8	35.5	321.6	240
Decatur	46.6	.....	89.2	20.8	110.0	150
De Kalb	93.5	75.0	633.7	.....	708.7	240
Delaware	64.3	.....	185.5	.....	185.5	330
Elkhart	110.6	75.5	642.8	.....	718.3	630
Fayette	39.0	.....	101.0	30.0	131.0	70
Floyd	12.0	.....	59.8	.....	59.8	155
Fountain	98.4	.....	263.1	.....	263.1	310
Franklin	31.0	.....	21.2	20.3	41.5	75
Fulton	74.8	29.3	190.6	.....	219.9	135
Gibson	49.5	.....	151.0	51.0	202.0	250
Grant	71.7	.....	234.8	.....	234.8	350
Greene	69.0	.....	127.0	.....	127.0	130
Hamilton	81.7	.....	213.1	21.2	234.3	195
Hancock	101.0	.....	454.1	56.0	510.1	155
Hendricks	81.0	.....	395.0	61.8	456.8	180
Henry	146.6	23.6	540.4	41.4	605.4	475
Howard	51.4	13.7	195.1	6.8	215.6	320
Huntington	50.0	18.4	269.5	.....	287.9	335
Jackson	49.7	.....	446.8	39.5	486.3	180
Jasper	68.7	.....	127.7	.....	127.7	115
Jay	34.5	.....	89.0	.....	89.0	120
Jefferson	21.8	6.5	78.4	21.8	106.7	130
Jennings	59.4	37.8	369.4	43.9	451.1	120
Johnson	21.4	.....	299.7	21.4	321.1	105
Knox	78.9	.....	299.7	56.4	356.1	235
Kosciusko	110.4	84.2	425.5	22.0	531.7	250
La Grange	24.0	.....	48.0	.....	48.0	20
Lawrence	53.8	.....	284.1	.....	284.1	105
Lake	270.2	204.7	1,812.3	111.5	2,128.5	605
La Porte	272.0	177.8	1,638.2	84.7	1,900.7	790
Madison	101.8	25.1	322.6	.....	344.7	480
Marion	219.8	.....	1,303.8	115.7	1,419.5	4,595
Marshall	141.1	133.8	930.5	22.1	1,086.4	240
Miami	93.7	0.8	352.9	.....	353.7	400
Martin	19.3	.....	173.7	.....	173.7	40
Monroe	29.2	.....	58.4	.....	58.4	120
Montgomery	122.7	.....	248.5	26.9	275.4	315
Morgan	27.6	.....	55.2	.....	55.2	100

Schedule B—(Continued).

	Miles of poles.	Miles of copper wire.	Miles of galvanized wire.	Miles of plain wire.	Total miles of wire.	Value of instruments and office furniture.
47						
Newton	65.5	.....	131.6	1.5	133.1	160
Noble	59.2	70.5	664.1	.....	734.6	225
Orange	27.5	.....	55.0	.....	55.0	60
Owen	40.5	.....	81.5	.....	81.5	145
Parke	77.2	.....	172.8	1.0	173.8	215
Pike	13.5	.....	54.0	.....	54.0	40
Porter	205.7	243.1	1,419.1	91.7	1,753.9	505
Posey	78.1	.....	142.6	.....	142.6	155
Pulaski	44.2	25.3	293.9	.....	319.2	155
Putnam	81.5	.....	336.3	61.9	398.2	225
Randolph	62.7	.....	204.4	.....	204.4	360
Ripley	30.5	41.8	268.3	30.5	340.6	110
Rush	80.7	.....	153.2	36.6	189.8	210
St. Joseph	192.1	76.5	765.0	49.2	890.7	505
Scott	21.0	9.2	156.4	7.7	173.3	75
Shelby	52.7	.....	125.6	40.2	165.8	130
Starke	78.4	162.2	478.4	17.1	657.7	130
Steuben	39.5	.....	60.5	.....	60.5	45
Sullivan	66.2	.....	149.6	50.4	200.0	110
Tipton	44.6	11.4	147.4	13.5	172.3	185
Tippecanoe	189.9	.....	940.1	57.9	998.0	1,610
Union	16.2	.....	64.8	32.4	97.2	40
Vanderburgh	65.4	.....	233.1	29.0	262.1	655
Vermillion	45.2	.....	135.6	.....	135.6	220
Vigo	77.7	.....	431.2	59.7	490.9	645
Wabash	98.5	16.2	334.5	.....	350.7	320
Warren	62.1	.....	233.5	.....	233.5	130
Warrick	6.0	.....	24.0	.....	24.0	15
Washington	27.6	.....	55.2	.....	55.2	60
Wayne	115.1	27.5	502.0	43.8	573.3	775
Wells	54.7	14.3	127.2	.....	141.5	140
White	65.8	.....	222.0	.....	222.0	285
Whitley	77.0	71.4	560.6	17.2	649.2	170
	6,436.7	1,871.9	28,704.9	1,780.4	32,357.2	$26,720

STATE OF INDIANA, } ss:
County of Marion, }

John F. Wallick, district superintendent of the Western Union Telegraph Company, being duly sworn, on oath says that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893, according to his best information and belief.

JOHN F. WALLICK,
District Superintendent.

Subscribed and sworn to before me this 11th day of July, 1893.

JNO. M. BUTLER, JR.,
Notary Public.

[SEAL.]

This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

(Endorsed on the back :) Return of the Western Union Telegraph Co. under house bill No. 431, approved March 6, 1893 *1893.* Filed July 11, 1893. J. O. Henderson, auditor of State.

48 And afterwards, to wit, on the 9th day of May, 1895, being the fourth judicial day of the May term, 1895, of said court, before the same honorable judge, the following proceeding was had herein, viz:

"Comes now the plaintiff by counsel and files its demurrer to the defendant's answer herein, which demurrer is in the words and figures following, that is to say:

STATE OF INDIANA, } *ss:*
County of Marion, }

THE STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290. Circuit Court. Demurrer.

The plaintiff demurs to the answer herein, and for cause of demurrer shows the court that the same does not state facts sufficient to constitute a defense to said action.

Wherefore, etc.

WILLIAM A. KETCHAM,
Attorney General.

A. G. SMITH,
LEON O. BAILEY,
MERRILL MOORES,
Of Counsel."

And afterwards, to wit, on the 11th day of June, 1895, being the twenty-fourth judicial day of the May term, 1895, of said court before the same honorable judge, the following proceedings were had herein:

"Come now the parties by counsel, and the court being duly advised, sustains the demurrer of the plaintiff to the defendant's answer herein, to which ruling of the court the defendant, at the time excepts.

And the plaintiff is now granted leave to file a supplemental complaint in this cause, and accordingly files the same. Said supplemental complaint is in the words and figures following, that is to say:

STATE OF INDIANA, } ss:
Marion County, }

In the Marion Circuit Court, May Term, 1895.

THE STATE OF INDIANA }
vs. } No. 7290.
THE WESTERN UNION TELEGRAPH COMPANY. }

49 The said plaintiff, The State of Indiana, by way of supplemental complaint against the defendant, The Western Union Telegraph Company, says that at and prior to the session of the State board of tax commissioners held in the office of the auditor of State in the year 1894 the defendant did make out and deliver to the auditor of State a statement verified by the oath of the officer of the company making such statement, showing among other things, the real estate, structures, machinery, fixtures, and appliances owned by said defendant and subject to local taxation within the State, and the location and assessed value thereof, and also its total mileage within the State of Indiana and in the various counties thereof; and said State board of tax commissioners being charged with that duty by law, did, at its session in 1894, assess and determine the total value of the property of said company within the State of Indiana exclusive of the real estate, structures, machinery, fixtures, and appliances subject to local taxation, and said board ascertained, determined, and assessed the unit value of the property of said defendant exclusive of the property subject to local taxation at the sum and value of three hundred — fifty-seven ($357.00) dollars per mile, and at that rate assessed to said company in the various counties the number of miles in each county through or into which the line of said defendant ran as follows:

In the county of Adams	34.30	miles.
In the county of Bartholomew	65.80	"
In the county of Benton	93.70	"
In the county of Blackford	27.10	"
In the county of Boone	104.70	"
In the county of Carroll	120.20	"
In the county of Cass	163.20	"
In the county of Clark	66.70	"
In the county of Clay	56.90	"
In the county of Clinton	128.50	"
In the county of Daviess	56.70	"
In the county of Dearborn	42.50	"
In the county of Decatur	53.40	"
In the county of De Kalb	99.10	"
In the county of Delaware	64.50	"
In the county of Elkhart	110.60	"
In the county of Fayette	40	"
In the county of Floyd	12	"
In the county of Fountain	103.40	"
In the county of Franklin	31	"

In the county of Fulton	77.80	miles.
In the county of Gibson	49.70	"
In the county of Grant	72.30	"
In the county of Greene	69	"
In the county of Hamilton	81.70	"
In the county of Hancock	101	"
In the county of Hendricks	81	"
In the county of Henry	146.60	"
In the county of Howard	51.40	"
In the county of Huntington	53	"
In the county of Jackson	79.50	miles.
In the county of Jasper	78.70	"
In the county of Jay	34.50	"
In the county of Jefferson	21.80	"
In the county of Jennings	59.40	"
In the county of Johnson	21.40	"
In the county of Knox	78.90	"
In the county of Kosciusko	110.40	"
In the county of La Grange	24	"
In the county of Lake	271.20	"
In the county of La Porte	272	"
In the county of Lawrence	88.40	"
In the county of Madison	106.50	"
In the county of Marion	209.80	"
In the county of Marshall	141.10	"
In the county of Martin	33.10	"
In the county of Miami	94.50	"
In the county of Monroe	29.20	"
In the county of Montgomery	122.70	"
In the county of Morgan	27.30	"
In the county of Newton	65.50	"
In the county of Noble	53.10	"
In the county of Orange	27.50	"
In the county of Owen	40.50	"
In the county of Parke	77.20	"
In the county of Pike	13.50	"
In the county of Porter	205.70	"
In the county of Posey	78.10	"
In the county of Pulaski	44.20	"
In the county of Putnam	81.50	"
In the county of Randolph	62.70	"
In the county of Ripley	30.50	"
In the county of Rush	80.70	"
In the county of Scott	22.50	"
In the county of Shelby	54.20	"
In the county of Starke	78.40	"
In the county of Steuben	39.50	"
In the county of St. Joseph	192.10	"
In the county of Sullivan	66.20	"
In the county of Tippecanoe	189.90	"
In the county of Tipton	44.60	"

In the county of Union	16.20	miles.
In the county of Vanderburgh	64.30	"
In the county of Vermillion	45.20	"
In the county of Vigo	77.70	"
In the county of Wabash	98.80	"
In the county of Warren	64.10	"
In the county of Warrick	6	"
In the county of Washington	27.60	"
In the county of Wayne	115.10	"
In the county of Wells	55.30	"
In the county of White	65.80	"
In the county of Whitley	77	"

51 Each and all of said assessments being made with reference to the value of three hundred and fifty-seven ($357.00) dollars per mile, as aforesaid. Thereupon after the completion of said assessments and after the same had been certified by said State board of tax commissioners to the auditor of State to be by him certified to the auditors of the various counties in the State of Indiana, the said defendant filed its certain bill of complaint in the United States circuit court within and for the district of Indiana, against John O. Henderson, the then auditor of State, asking that he be enjoined from certifying to the auditors of the several counties of the State the assessments for such several counties so made by the State board of tax commissioners and in said proceedings obtained a temporary restraining order and injunction enjoining, restraining and prohibiting him, the said John O. Henderson, from certifying said assessment to the said several county auditors, and thereupon, although as plaintiff is informed and believed, and as said John O. Henderson was informed and believed, the said United States court had no jurisdiction whatever over the subject-matter of said action because of the fact that with respect to said matter said defendant Henderson represented the State of Indiana and was in that behalf acting for and on behalf of the State, yet in order not to have any complications, said Henderson did, in compliance with said order of said United States circuit court, neglect and refuse to certify to the several auditors the assessments so made of said unit property by said State board of tax commissioners, but that said assessment still remains in full force and effect, and the same has been by the supreme court of this State so adjudicated in a suit brought by said Western Union Telegraph Company against Thomas Taggert, *et al.*, the auditors and treasurers of the several counties of the State, in this court, wherein judgment was rendered in favor of the defendants, from which an appeal was taken to the supreme court of the State, and said judgment was in all respects affirmed. Nevertheless, by reason of said injunction and restraining order of said United States court so granted, the several auditors in the several counties throughout the State into which the lines of the defendant's telegraph extend, were prevented from extending the taxes upon said unit property upon the duplicates which they were by law required to deliver and which they did deliver, on or about

the first day of January, 1895, to the several treasurers in said counties.

Plaintiff further avers that notwithstanding said taxes upon the unit property were not extended at and prior to the delivery of the duplicates by the auditors to the treasurers, the local taxes upon the local property were so extended and the amount and value of each and every mile of the defendant's property throughout
52 the State, and the mileage in each county having been ascertained by the State board of tax commissioners and the rate for taxation in the different counties, townships, and municipalities having been ascertained and levied by the authorities of said counties, townships, cities, towns and other municipalities, the amount of taxes properly chargeable to and payable by said Western Union Telegraph Company in each of the counties is as follows:

In the county of Adams the sum of	$153.86
In the county of Bartholomew the sum of	278.65
In the county of Benton the sum of	494.87
In the county of Blackford the sum of	140.98
In the county of Boone the sum of	494.46
In the county of Carroll the sum of	641.56
In the county of Cass the sum of	775.60
In the county of Clark the sum of	307.26
In the county of Clay the sum of	264.97
In the county of Clinton the sum of	639.82
In the county of Daviess the sum of	281.77
In the county of Dearborn the sum of	201.85
In the county of Decatur the sum of	228.50
In the county of De Kalb the sum of	445.68
In the county of Delaware the sum of	372.41
In the county of Elkhart the sum of	512.50
In the county of Fayette the sum of	166.59
In the county of Floyd the sum of	48.44
In the county of Fountain the sum of	614.97
In the county of Franklin the sum of	165.56
In the county of Fulton the sum of	349.98
In the county of Gibson the sum of	240.66
In the county of Grant the sum of	385.51
In the county of Greene the sum of	352.51
In the county of Hamilton the sum of	404.36
In the county of Hancock the sum of	460.05
In the county of Hendricks the sum of	403.07
In the county of Henry the sum of	744.68
In the county of Howard the sum of	250.37
In the county of Huntington the sum of	237.27
In the county of Jackson the sum of	467.43
In the county of Jasper the sum of	395.16
In the county of Jay the sum of	201.20
In the county of Jefferson the sum of	81.81
In the county of Jennings the sum of	315.00
In the county of Johnson the sum of	108.15

In the county of Knox the sum of	$360.30
In the county of Kosciusko the sum of	452.85
In the county of La Grange the sum of	110.10
In the county of Lake the sum of	1,107.66
In the county of La Porte the sum of	1,293.95
In the county of Lawrence the sum of	400.02
In the county of Madison the sum of	557.70
In the county of Marion the sum of	1,080.78
In the county of Marshall the sum of	621.07
In the county of Martin the sum of	230.94
In the county of Miami the sum of	462.49
In the county of Monroe the sum of	142.67
In the county of Montgomery the sum of	548.98
In the county of Morgan the sum of	169.91
53 In the county of Newton the sum of	322.00
In the county of Noble the sum of	193.90
In the county of Orange the sum of	139.85
In the county of Owen the sum of	178.11
In the county of Parke the sum of	350.19
In the county of Pike the sum of	67.84
In the county of Porter the sum of	956.09
In the county of Posey the sum of	375.15
In the county of Pulaski the sum of	259.41
In the county of Putnam the sum of	327.84
In the county of Randolph the sum of	294.03
In the county of Ripley the sum of	127.24
In the county of Rush the sum of	348.66
In the county of Scott the sum of	120.48
In the county of Shelby the sum of	249.32
In the county of Starke the sum of	501.80
In the county of Steuben the sum of	166.60
In the county of St. Joseph the sum of	849.33
In the county of Sullivan the sum of	307.12
In the county of Tippecanoe the sum of	1,151.39
In the county of Tipton the sum of	193.88
In the county of Union the sum of	100.92
In the county of Vanderburgh the sum of	336.69
In the county of Vermillion the sum of	244.31
In the county of Vigo the sum of	341.00
In the county of Wabash the sum of	493.97
In the county of Warren the sum of	336.89
In the county of Warrick the sum of	28.27
In the county of Washington the sum of	126.13
In the county of Wayne the sum of	577.89
In the county of Wells the sum of	276.16
In the county of White the sum of	328.53
In the county of Whitley the sum of	373.57

the total taxes so due from and payable by said defendant in the several counties of the State amounting in the aggregate to thirty-

one thousand, two hundred and one dollars and seventy-nine cents ($31,201.79).

That such taxes were not extended upon the duplicates in each or any of the counties of the State by reason of the wrongful act of the defendant in procuring the order of injunction against John O. Henderson, auditor of State as aforesaid.

That said defendant did not on or before the first Monday in November, 1894, pay to the treasurers of said several counties named in the original complaint herein the balances so due from the taxes of 1893, and such taxes so levied and assessed for said year remained and continued unpaid and delinquent, and still remain unpaid and delinquent by reason whereof and the statute in such case made and provided, the additional penalty of six per cent. accrued upon the taxes mentioned and set forth in said original complaint.

Plaintiff further says that said defendant did not on or before the third Monday in April, 1895, nor has it at any time since paid to either or any of the treasurers in either or any of the counties named the taxes so levied, assessed and due in said counties, nor did
54 it pay to said treasurers or either or any of them an amount equal to the first installment thereof, but upon the claim and pretense that the acts of the General Assembly of the State of Indiana, and especially the act of 1893 touching the assessment of telegraph companies, was unconstitutional and void, and that the action of the State board of tax commissioners was void and of no effect, refused to pay the whole or any portion of the taxes levied upon the assessment of the State board of tax commissioners, but in order to maintain a standing did offer to pay and did pay to said several treasurers such sums as in its judgment and opinion it was willing to contribute and pay, and after such several payments were so made by it there still remained unpaid and delinquent in said several counties the sums and amounts following, to wit:

In the county of Adams the sum of	$153.86
In the county of Bartholomew the sum of	199.50
In the county of Benton the sum of	333.14
In the county of Blackford the sum of	111.42
In the county of Boone the sum of	341.08
In the county of Carroll the sum of	641.56
In the county of Cass the sum of	775.60
In the county of Clark the sum of	307.26
In the county of Clay the sum of	190.67
In the county of Clinton the sum of	497.13
In the county of Daviess the sum of	212.43
In the county of Dearborn the sum of	201.85
In the county of Decatur the sum of	163.76
In the county of De Kalb the sum of	273.09
In the county of Delaware the sum of	289.06
In the county of Elkhart the sum of	512.50
In the county of Fayette the sum of	128.00
In the county of Floyd the sum of	33.46

In the county of Fountain the sum of	$490.63
In the county of Franklin the sum of	165.56
In the county of Fulton the sum of	259.79
In the county of Gibson the sum of	178.20
In the county of Grant the sum of	298.33
In the county of Greene the sum of	352.21
In the county of Hamilton the sum of	317.72
In the county of Hancock the sum of	327.52
In the county of Hendricks the sum of	276.56
In the county of Henry the sum of	550.48
In the county of Howard the sum of	250.37
In the county of Huntington the sum of	156.97
In the county of Jackson the sum of	308.06
In the county of Jasper the sum of	395.16
In the county of Jay the sum of	159.44
In the county of Jefferson the sum of	57.83
In the county of Jennings the sum of	195.78
55 In the county of Johnson the sum of	108.15
In the county of Knox the sum of	264.42
In the county of Kosciusko the sum of	274.48
In the county of La Grange the sum of	110.10
In the county of Lake the sum of	664.92
In the county of La Porte the sum of	824.18
In the county of Lawrence the sum of	303.19
In the county of Madison the sum of	557.70
In the county of Marion the sum of	270.85
In the county of Marshall the sum of	374.00
In the county of Martin the sum of	85.85
In the county of Miami the sum of	348.13
In the county of Monroe the sum of	115.50
In the county of Montgomery the sum of	441.27
In the county of Morgan the sum of	137.81
In the county of Newton the sum of	260.49
In the county of Noble the sum of	193.90
In the county of Orange the sum of	112.23
In the county of Owen the sum of	145.22
In the county of Parke the sum of	350.19
In the county of Pike the sum of	67.84
In the county of Porter the sum of	552.84
In the county of Posey the sum of	307.85
In the county of Pulaski the sum of	158.12
In the county of Putnam the sum of	327.84
In the county of Randolph the sum of	284.03
In the county of Ripley the sum of	64.59
In the county of Rush the sum of	348.66
In the county of Scott the sum of	74.54
In the county of Shelby the sum of	190.25
In the county of Starke the sum of	288.05
In the county of Steuben the sum of	160.66
In the county of St. Joseph the sum of	849.33
In the county of Sullivan the sum of	307.12

In the county of Tippecanoe the sum of	$1,151.39
In the county of Tipton the sum of	142.14
In the county of Union the sum of	68.73
In the county of Vanderburgh the sum of	236.78
In the county of Vermillion the sum of	189.36
In the county of Vigo the sum of	99.60
In the county of Wabash the sum of	363.82
In the county of Warren the sum of	258.67
In the county of Warrick the sum of	16.74
In the county of Washington the sum of	126.13
In the county of Wayne the sum of	404.99
In the county of Wells the sum of	212.67
In the county of White the sum of	328.53
In the county of Whitley the sum of	373.57

56 The amounts so remaining unpaid and delinquent in said several counties wholly exclusive of penalties, but after deducting all payments thereon so made by said defendant aggregating the sum of twenty-four thousand and eight dollars and forty cents ($24,008.40) and the penalties thereon because of the failure of the defendant to pay the first installment thereon when the same was due and payable, to wit, twenty-four hundred dollars and eighty-four cents (2,400.84), accrued as against said defendant, and a right of action has accrued to this plaintiff to have and recover of the defendant the delinquent taxes with penalties thereon, for the year 1893, aggregating twenty-four thousand two hundred and seventy-three dollars and fourteen cents ($24,273.14) and also the delinquent taxes for the year 1894 with the penalties thereon aggregating twenty-six thousand four hundred and nine dollars and twenty-nine cents ($26,409.29), and by reason of the institution and prosecution of the action to recover in addition the penalty of fifty per centum thereon as by the statute in such cases made and provided, the whole amount of such taxes and penalties for both of said years still remaining due and unpaid aggregating the sum of seventy-six thousand and twenty-three dollars and sixty-five cents ($76,023.65).

Plaintiff further avers that although the defendant has been often thereto requested it has wholly failed, neglected and refused to pay said taxes so levied and assessed, or any part or parcel thereof, and the same now still remain due and uncollected.

Plaintiff further avers that although said defendant owns and controls within the State of Indiana a large amount of property, real and personal, and although it is daily in receipt of a large income derived from the carrying on of its business, and is abundantly solvent, and able to pay the said taxes so levied and assessed against it, and although it has always refused as aforesaid, and still refuses to pay the said taxes so levied and assessed against it, yet its property, business, assets and income are of such a quasi-public character that the public interests may be jeopardized and interfered with in the event that the property owned and operated by it should be levied upon either by a sheriff or by the county treasurers, and the property so levied upon exposed to sale at either a sheriff's or

treasurers' sale by reason of the possible interruption of its duties as a common carrier, and the sale of property necessary to its operation as such common carrier and in the discharge of the duties owing by it to the public, to this plaintiff and the Government of the United States, and it has, therefore, become necessary that
57 a receiver should be appointed upon the final hearing of this cause to take possession of the property owned, controlled and operated by said defendant within the State of Indiana, and to carry on the business of a telegraph company pending the collection of the amount so due to this plaintiff and out of the receipts and income arising from the operation of said business, after defraying the operating expenses, to apply the surplus to the payment and discharge of the amounts so due on account of said taxes, and the penalties properly due from and chargeable against said defendant until the whole amount shall have been paid.

Wherefore plaintiff prays judgment against the defendant for the sum of one hundred thousand dollars ($100,000.00), for the appointment of a receiver to take possession and charge of the property, business and assets of said defendant within the State of Indiana, and to carry on said business under the direction of this court, applying the income and receipts arising therefrom to the payment of the operating expenses, and of the amount so due on account of said taxes and the penalties thereon until the same shall have been fully paid and discharged.

And plaintiff prays for such other and further relief as to the court may seem just and equitable in the premises.

W. A. KETCHAM,
Attorney General.

MERRILL MOORES,
For the State.

And afterwards, to wit: on the 15th day of June, 1895, being the 36th judicial day of the May term, 1895, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Comes now the defendant by counsel and files its demurrer to the supplemental complaint herein in the words and figures following, viz:"

STATE OF INDIANA, } ss:
Marion County, }

THE STATE OF INDIANA } No. 7290. Circuit
vs. } Court.
THE WESTERN UNION TELEGRAPH COMPANY. }

Demurrer to Supplemental Complaint.

The defendant demurs to the supplemental complaint herein, for the reason that it does not state facts sufficient to constitute a cause of action.

BUTLER, SNOW & BUTLER,
Attorneys for Defendant.

58 And afterwards, to wit: on the 22d day of June, 1895, being the 42d judicial day of the May term, 1895, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Come now the parties by counsel, and the court being duly advised in the premises, now overrules the said defendant's demurrer to the supplemental complaint herein; to which ruling of the court the said defendant at the time excepts."

And afterwards, to wit: on the 27th day of June, 1895, being the 46th judicial day of the May term, 1895, of said court, before the same honorable judge, the following proceedings were had herein, viz:

"Comes now the defendant, by counsel, and files its answer to the plaintiff's supplemental complaint herein, in the words and figures following, that is to say:"

In the Marion Circuit Court.

STATE OF INDIANA
vs.
THE WESTERN UNION TELEGRAPH COMPANY.

Answer to Supplemental Complaint.

The defendant for answer to the supplemental complaint herein, adopts and makes a part hereof all the allegations of the answer to the complaint herein not specially relating to the assessment and collection of taxes for the year 1893, except as herein differently alleged:

The defendant further alleges that the State auditor has been enjoined by the circuit court of the United States for the district of Indiana from certifying to the county auditors the valuations of the defendant's property made by the State board of tax commissioners in the year 1894, which injunction is now outstanding, and that by reason of said injunction, there are no taxes on the tax duplicates of any counties now shown to be due from the defendant.

That between the first day of April, 1894, and the first day of June, 1894, the defendant filled out and delivered to the township assessors of each township of the State of Indiana in which there was located on the 1st day of April, 1894, any property belonging to the defendant, an itemized list of all said property located in each township, and a statement of the value of each parcel of the same, sworn to by John F. Wallick, the district superintend-
59 ent of the defendant, who was familiar with said property and its value, said list in all respects conforming to the requirements of the statutes of Indiana relating to the listing of property by tax-payers.

That certain of said lists and valuations were changed and increased by the county boards of review of certain of the counties of Indiana, in which the lines of said defendant are situated, at their session in August, 1894;

That the defendant prior to the third Monday of April, 1895, when the first instaliment of taxes became due, paid to the respective county treasurers of each of the eighty-four counties in which the property of the defendant was situated on the first day of April, 1893, the amounts claimed to be due as taxes on all the property of the defendant situated in each of said counties respectively which the respective county treasurers claimed was subject to local taxation; and as respects the property purported to be assessed by the State board of tax commissioners at its session in 1894, the defendant paid or tendered to said respective treasurers the amounts due as taxes reckoned upon the valuations stated in the lists filed by the defendant with the said respective county treasurers as changed by the proper assessing officers and county boards of review, which said amounts were received by the respective county treasurers of the respective counties on account of the taxes for the year 1894, which said amounts the defendant admits were justly due from it as taxes for the year 1894; said amounts so paid aggregating about $12,000;

That the aggregates of the amounts so paid by the defendant as taxes for the years 1892, 1893 and 1894, were substantially the same;

That there was no material change in the character of the defendant's property in Indiana or in the conditions affecting its value between April 1st, 1893, and April 1st, 1894; nor during said period was there more than a very slight increase in amount of said property, to wit, an increase in amount to wit, five per cent.;

That the actual cash value of the defendant's plant in Indiana on April 1st, 1894, ascertained by taking the cost of original construction as nearly as the same can be ascertained, and deducting therefrom a sum partially equal to the deterioration of the plant, was $708,804.40; and said plant could have been replaced on said date by an entirely new plant of the same extent and location and of far more reliable and lasting material for the sum of $1,340,935.12;

That the defendant duly filed with the auditor of the State of Indiana prior to June 1st, 1894, the statement and return required by said pretended statute, chapter 171, Acts of 1893, a copy of which is hereto annexed marked "Exhibit A;"

60 That the State board of tax commissioners duly held a session as provided by law, in August and September, 1894, and at said session fixed the same valuation per mile upon defendant's property in Indiana as in 1893, to wit: $357.00 per mile, and upon its property in Indiana, being 6,563 miles, a total valuation of $2,342,991.00;

That said State board of tax commissioners at the time of making said pretended valuation of defendant's said property, caused to be entered upon the official record of said board, required by law to be kept by said board, on said August 24, 1894, the following statement and certificate:

"In accordance with the requirements of the act of the General Assembly of the State of Indiana, approved March 6, 1893, the State board of tax commissioners, after full consideration, does hereby

assess and value telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight, joint stock associations, companies, copartnerships and corporations transacting business in the State of Indiana, which assessment and valuation is as follows, to wit:

"Telegraph and telephone companies.

"Assessment and valuation of telegraph and telephone companies in the State of Indiana by the State board of tax commissioners for the year 1894, exclusive of real estate, structures, machinery, fixtures, and appliances subject to local taxation within the State.

	Miles.	Per mile.	Total.
Western Union Telegraph Co....	6,563.00	$357	$2,342,991 00
Postal Telegraph Cable Co.....	678.13	175	118,672 75
Grand Rapids & Indiana R. R. Telegraph Company	106.22	75	7,966 50
Cumberland Telephone and Telegraph Co....	69.00	100	6,900 00
Ohio Valley Telephone Co.....	130.00	75	9,750 00
Central Union Telephone Co.....	2,076.91	250	519,227 50
Greensburg Telephone Co.....	106.00	40	4,240 00
American Telephone and Telegraph Company.....	254.92	500	127,460 00
Cincinnati, Richmond and Ft. Wayne R. R. Telegraph Co....	85.77	75	6,432 75
Total.....	.....	.....	$3,143,640 50"

61 That at the same time that the State board of tax commissioners made and determined upon said valuation of the said property of defendant of three hundred and fifty-seven dollars ($357.00) per mile of telegraph line in Indiana, under the authority of and pursuant to said pretended statute of March 6, 1893, they also made and determined upon the following valuations per mile of line in Indiana of the said property of the following-named telephone and telegraph companies owning lines and doing business in Indiana under the authority of and pursuant to said pretended statute of March 6, 1893, to wit:

American Telephone and Telegraph Company, five hundred dollars ($500.00) per mile;

Western Union Telegraph Company, three hundred and fifty-seven dollars ($357.00) per mile.

Central Union Telephone Company, two hundred and fifty dollars ($250.00) per mile;

Postal Telegraph Cable Company, one hundred and seventy-five dollars ($175.00) per mile;

Cumberland Telephone and Telegraph Company, one hundred dollars ($100.00) per mile;

Grand Rapids & Indiana Railroad Telegraph Company, seventy-five dollars ($75.00) per mile;

Ohio Valley Telephone Company, seventy-five dollars ($75.00) per mile;

Cincinnati, Richmond & Ft. Wayne Railroad Telegraph Company, seventy-five dollars ($75.00) per mile;

Greensburg Telephone and Telegraph Company, forty dollars ($40.00) per mile;

That all said companies are under substantially the same conditions with defendant with respect to cost of construction and maintenance of said telegraph property, and that all of said property upon a valuation based upon cost of construction and maintenance, and making allowance for deterioration, is worth from fifty dollars ($50.00) to two hundred dollars ($200.00) per mile of line, according to the quality and amount of material used in the construction thereof, and making reasonable allowance for deterioration;

That any value above the sum of two hundred dollars ($200.00) per mile of line, placed upon any of said property must have been, and in fact was, by said State board of tax commissioners, placed upon said property by reason of the fact that the companies owning said telegraph and telephone property are, at the present time, by reason of the business enterprise and ability of the managers of the business done upon and by means of all the telegraph and other property of said companies, and their allied and connected properties outside of Indiana, able to cause said companies to earn annually from their said business a greater amount than they would be obliged to pay as rent for all said property, were the same owned by persons or corporations other than themselves, which said valuations are, as compared with the valuations placed upon the property of other tax-payers in Indiana, unjust and not uniform or equal;

62 That, in so acting, the said State board of tax commissioners acted in conformity with the provisions of the said pretended statute, chapter 171, Acts of 1893, and made the valuations and divisions thereof according to the rule prescribed in said pretended statute.

That said valuation included the elements of valuation set out in the answer to the complaint herein; that there was no market value to all the shares of defendant's stock on April 1, 1894, for the reasons stated in the answer to the complaint herein; that the market value of the shares sold on April 1, 1894, or at any other time, is a shifting and uncertain basis of value, for the reasons stated in the answer to the complaint herein; that the stock of defendant between January 1, 1894, and May 1, 1894, varied from $80.87 to $87.50 per share;

That said pretended statute, chapter 171, Acts of 1893, and the assessment and valuation thereunder, is unconstitutional and void for the reasons stated in the answer to the complaint herein;

Defendant further says that upon the appeal to the supreme court of Indiana in the case of Western Union Telegraph Company *vs.*

Taggart, auditor, and others, mentioned in the answer to the complaint herein, and involving the right of the collecting officers of the State of Indiana to collect of the defendant all the taxes mentioned in the complaint herein, the said supreme court, in deciding said appeal, granted an injunction restraining the defendants, as such collecting officers, from collecting the taxes mentioned in complaint therein, which are the same taxes mentioned in the original complaint in this cause, pending the decision of the Supreme Court of the United States on writ of error; that such writ of error was duly perfected and is now pending, and such injunction is now in full force.

Wherefore defendant prays that the plaintiff take nothing by its supplemental complaint herein, and for judgment for costs and for all other proper relief.

BUTLER, SNOW & BUTLER,
Attorneys for Defendant.

63 EXHIBIT A.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the Western Union Telegraph Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total capital stock. (See page 1 of annexed statement.)

Item 2. Number of shares of capital stock issued and outstanding. (*a.*) Par or face value of each share. (See page 1 of annexed statement.)

Item 3. Principal place of business. (See page 1 of annexed statement.)

Item 4. Market value of shares of stock on the 1st day of April, 1893. (*a.*) If shares have no market value then state actual value thereof. (See page 1 to 4 of annexed statement.)

Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation. (See Schedule B, attached to annexed statement.)

Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation situate outside of the State of Indiana, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated. (See Schedule A, attached to the annexed statement.)

Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz: (See pages 10 and 11 of annexed statement.)

Item 8. (*a.*) Total length of the main lines of all the railroad companies over which cars are run. (*b.*) Total length of so much of the main lines of the railroad companies, over which said cars are run, as are outside the State of Indiana. (*c.*) Total length of the lines of said railroad companies, over which said cars are run, within each of the counties and townships in the State of Indiana. (See page 4 of annexed statement; see Schedule B attached to annexed statement and note on page 12 of annexed statement.)

64 INDIANAPOLIS, —— —, ——.

To the auditor of the State of Indiana:

The Western Union Telegraph Company, a corporation duly organized under the laws of the State of New York and owning and operating lines of telegraph in the State of Indiana, protesting that the supposed act of March 6, 1893, is invalid and void under the constitution of Indiana and that of the United States, and that it is not obliged by law to make any report thereunder to the auditor of State, respectfully submits the following in compliance with the request of the auditor of State and only out of respect to that officer and the State board of tax commissioners:

On the 2d day of April, 1894, said corporation had its principal place of business at 195 Broadway, New York city, but had a principal office for the State of Indiana at 19 South Meridian street in the city of Indianapolis. Upon that day the total capital stock of the company, issued and then outstanding, was $94,820,000, consisting of 948,200 shares of $100 each, par value.

On the 2d day of April, 1894, there was no market value for all of the shares of the company's stock. The total number which was sold or speculated in on that day on the New York stock exchange amounts to 9,000 shares, at prices ranging from $84.00 to $85.37 per share. Of these shares dealt in on the New York stock exchange, only a small number were actually delivered by the sellers to the purchasers, the remaining transactions having cancelled each other through the clearing-house of the New York stock exchange without the delivery or transfer of shares. It was impossible on that day or upon any other day since to sell all the shares of the stock of the said company for such prices or any other approximating thereto, whether such price was the real value of the shares or not. There is, and from the nature of the case can be, no market price for all the shares of stock of the company.

Whether the price paid on April 2, 1894, was the fair actual value of the shares sold it is impossible for the company's officers to state. Such stock-exchange prices, whether of speculative or actual sales, do not fairly represent the actual value of the company's property. Such exchange prices are largely influenced by speculation based upon elements entirely outside of the company's property, earnings or future prospects—for instance, upon the state of national politics,

65 upon the national financial policy and the certainty or uncertainty of what that policy may be in the future, upon the amount of shipments of gold abroad or the importations of

gold, upon the stringency or ease of the local money market, upon the financial necessities of the holders of the company's stock, even upon rumors of insolvency of prominent financiers, who may or may not be holders of the company's shares, upon rapid declines in the market prices of shares of other companies, upon panicky conditions in financial centers at home or in Europe, upon the formation of pools or cliques to advance or depress the stock-exchange prices of these shares or even of other shares, and upon many other considerations which have no relation to the company's business. This is shown in a marked degree from the circumstances that between the first day of January, 1893, and the first of May, 1893, the stock-exchange prices of the company's shares fell from 101 to 80¼, and even in the month of April, 1893, fell from 94½ to 80, falling with the same rapidity as they had within several months advanced.

Any movements on the stock exchange of prices, both down and up, were without reference to the value of the company's property or of its future prospects or its present or future business, all of which were stable and have been so for many years. During the past thirteen years, in which the company has regularly paid a dividend, and in which its surplus earnings have not materially altered from year to year, in which there was a steady increase of value of the company's actual property, the stock-exchange prices have varied as follows:

1882	76⅛	to	93⅜
1883	71¾	to	88¼
1884	49	to	78⅛
1885	53½	to	81⅜
1886	60½	to	81½
1887	67½	to	81⅝
1888	70⅝	to	86¾
1889	81⅝	to	88¾
1890	71¾	to	87
1891	76	to	85½
1892	82	to	100⅜
1893	67⅛	to	101
1894 to May 1	80⅞	to	87½

66 This company declares that any price of the shares, whether market value or actual value, includes, amongst other things, a consideration of the company's franchises, owned or exercised by it, granted by the State of New York, by the United States of America, by Canada, by Great Britain, by Cuba, and by other States and countries; a consideration of the company's good will, its probable future earnings, its present management and its prospective management, its contract or other relations to powerful telephone and cable companies, each and all of very great value to the company, but none of which elements is the subject of taxation by the State of Indiana, as well as a consideration of the actual value of the property, real or personal, including that which is situated in the State of Indiana and taxable by it; that in estimating such market

or actual value of the shares, the value of such real or personal property of the entire system of the company or that situated in the State of Indiana, cannot be distinguished from the value of such intangible franchises, rights, contracts, management and good will, and that any attempt upon the part of the State of Indiana to value the company's entire property, or that which is situated in the State of Indiana, upon the basis of any market or the actual value of the shares, will necessarily include a value of such franchises, rights, contracts, management and good will, all of which are beyond the jurisdiction of the State, and any taxation thereof by the State of Indiana would be null and void.

The whole length of the lines of the company whether owned, leased or controlled through the ownership of shares of other companies, including those extending into and through Canada, and under the high seas to Cuba and England is 189,936 miles, and the length of such lines in the State of Indiana, was 6,563 miles.

This company represents however, that a fair valuation of its property in the State of Indiana, which consists entirely of its telegraph lines and appurtenances cannot be ascertained even approximately by applying the proportion which such mileage of line in Indiana (6,563) bears to the entire mileage of the company (189,936) upon a valuation of all the shares of the company's stock whether such valuation be stock-exchange values or the actual value of such shares, because such valuation includes elements of value not existing within the State of Indiana, or not taxable by it as stated aforesaid, and also because the lines of telegraph possessed by this company in and out of the State of Indiana, are not of uniform value per mile and that any valuation of the company's lines in Indiana, upon a basis of a uniform value per mile of all the company's lines would be a great injustice to this company and would result practically in double taxation of the company's property.

67 The value of the lines of the company within the State of Indiana, if made upon the basis of the actual cost, less depreciation, will not exceed $708,804.40, but if it should be made upon the basis of the cost of reproduction of an entirely new line of the same extent and location, it would be $1,340,935.12.

This is apparent from the following facts: The standard size of poles in Indiana is 25 feet long, costing delivered from 50 cents to $1.20, according to the kind of timber. White cedar largely predominates and costs $1.20. In cities and towns, poles ranging from 30 to 55 feet in length are used, but the proportion of long poles, compared with those which are 25 feet long, is very small A fair average cost of poles and fixtures would not exceed $1.60. each. The labor required to set them in the ground and attach the cross-arms thereto will not average more than $1.00 per pole, of which there are thirty-three to the mile.

The standard size of No. 8 wire weighs 380 pounds to the mile, and costs with freight added 4½ cents per pound, making the cost per mile of wire equal $17.10. The cost for stringing the wire on poles averages $4.00 per mile. A set of instruments costs $6.50 upon the average.

Upon this basis the full value of the company's plant in Indiana, should it be reconstructed entirely new of the same extent and location, would be as follows:

6,563 miles of poles at $85.80 per mile	$563,105 40
34,785.2 miles of wire at $21.10 per mile	733,967 72
Sets of instruments at $6.50 } Office furniture }	28,862 00
Miscellaneous items	15,000 00
	$1,340,935 12

This valuation is far in excess of the actual value of the existing plant, considered as property. The existing lines have been largely constructed under contract with the railroad companies for joint use, the telegraph company furnishing the material and the railroad company the labor. As the average life of a telegraph pole is from 12 to 15 years, and a large portion of the line in Indiana is old, requiring replacement in a few years at a high cost, it is apparent that the present plant is not of the value of a new one.

While the cost per mile in the State of Indiana, or in any other State, can be averaged with substantial accuracy, because the conditions existing there are substantially uniform, no such value can apply to the company's lines as a whole. Thousands of
68 miles of line lie in cables under the high seas, costing between $3,000 and $4,000 per mile. In the more densely settled portions of the country, like Massachusetts, New York, Pennsylvania and New Jersey, where also the company's main trunk lines are larger, the cost per mile of line is vastly greater than the average cost per mile of line—the company possessing thousands of miles of line there which cost fully $2,500 per mile.

The company also has a large mileage of line laid under ground in conduits, in which the cost is much greater than the average per mile of its system. In the far West of the United States the necessity to transport poles and wires from the East for a great distance adds largely to the cost per mile of line, and many thousands of miles of line have there been built in advance of the railroad and at a great cost for transportation by wagon across the plains and mountains, making the rate there far beyond the average.

Besides the elements of Federal and foreign franchises, contracts, patent rights and business skill entering into the value of the shares of stock as hereinbefore set forth, this company has large investments in bonds and stocks of other corporations, principally telephone companies and local telegraph companies, of an aggregate value of $7,216,035.79, none of which are of corporations of the State of Indiana, and it also has large investments in real estate in New York city and Chicago, and other cities and towns in the United States and Canada, none of which are in Indiana; the cost of which was $4,979,533.74, as per Schedule A hereto attached. It is impossible to state to what extent this real estate is directly used in the conduct of the business of the company. Each piece of property

is in some degree used for the company's business, but it is not all exclusively used for that purpose. The large office buildings in New York city and in Chicago are only partially used for the company's business, the remainder of it being rented to tenants as any other property of that character. The said schedule also sets forth the assessed valuation of each of these pieces, so far as the company's books show them. Some of them are exempt from taxation by local law, others are for local reasons assessed much below their actual value.

Any apportionment to Indiana of the company's capital stock on the mileage basis will necessarily include the value of such shares, bonds, real estate, franchises, contracts and patent rights, all of which are outside the jurisdiction of the State of Indiana.

As a further proof that the mileage basis does not correctly indicate the value of the company's property in Indiana, the
69 company shows that while the gross receipts from the company's business throughout the entire system average $32.00 per mile of wire, in Indiana the average is $14.00 per mile of wire, and that the net earnings of the entire system average $10.00 per mile of wire, but in Indiana do not exceed $4.00 per mile of wire.

As a further proof to the same end the company shows that if the entire capital of the company be taken at the stock-exchange prices of April 2d last—say 84 per cent.—and if the apportionment thereof to the State of Indiana upon the mileage basis above set forth, be taxed at an average rate of 2 per cent. (which is probably the average rate of taxation in Indiana,) it would require the company to pay a tax in this State of about $55,000.00. As the net earnings of the company from all the business in the State of Indiana, whether from interstate or local traffic, do not exceed the sum of $110,000.00, it appears that a tax upon such mileage basis would equal 50 per cent. of the entire income of the company's property in the State, which is a rate of taxation unheard of, grossly unequal and substantially destructive.

The company further represents that on June 8, 1867, it formally accepted the provisions of the statute of July 24, 1866, (now sections 5263–5269 of the Revised Statutes of the United States), that all the telegraph lines in the State of Indiana which it owns, leases or operates are erected and constructed upon the railroads, streets and other post-roads of the United States. That by virtue thereof this company is an agent of the Government of the United States in the transmission of intelligence by electricity from point to point within the State of Indiana and from or to points without the State of Indiana, to or from points within the State of Indiana for the Government of the United States and citizens thereof; that the enforcement of this scheme of taxation provided in the supposed law of the State of Indiana, approved March 6, 1893, will substantially destroy the value of the property of this company in the State of Indiana constructed upon such post-roads and operated by this company in the performance of its functions under said act of Congress and thereby prevent it from the due performance of its obligations thereunder.

Schedule B attached is a statement of the lines, machinery, fixtures and appliances owned by said company within the State of Indiana, and the location thereof in each county or township. The company has no other real estate or personal property subject to local taxation than set forth in said schedule.

70 The company has but one mortgage upon the whole or any part of its property, which mortgage was made to secure what are known as the building bonds maturing May 1, 1902, bearing 7 per cent. interest. The amount outstanding is $1,182,000, but there is in the hands of the trustee for its bondholders a sinking fund accumulation paid by the company of $108,142.61. This mortgage is upon the real estate of the company situated at the corner of Broadway and Dey streets, in New York city, and does not cover any other property. The company protesting that by the terms of said pretended statute it is required to report only the mortgage or mortgage bonds, but inasmuch as the auditor of the State of Indiana has requested the company to report its other bonds not secured by mortgage, of courtesy to that officer it states these bonds which are as follows:

1. Sterling bonds, due March 1, 1900, rate of interest 6 per cent., amount outstanding $811,134, with a sinking fund in the hands of the trustee of $10,088. There is no mortgage or other security for these bonds; they are simply debentures.

2. Currency bonds, due May 1, 1900, interest 7 per cent.; amount outstanding, $4,920,000. There is no security for these bonds; they are simply debentures.

3. Collateral trust bonds, due January 1, 1938, rate of interest 5 per cent.; amount outstanding $8,352,000. There is no sinking fund. These bonds have been issued for the purpose of acquiring some securities, to wit: bonds and shares of some of the telegraph companies whose lines have been leased by the Western Union Telegraph Company, at a fixed rental equal to at least six per cent. upon the par value of such bonds and shares. The shares and bonds of such leased telegraph companies were in exchange for said collateral trust bonds delivered to the trustee, and are held by it as a security for the collateral trust bonds of this company. Such bonds and shares so acquired by the trustee equal $8,352,000. None of these bonds and shares have been included among the investments in bonds and stocks of other companies owned by this company hereinbefore mentioned as having an aggregate value of $7,216,035.72. The lines of said leased companies whose bonds and shares have thus been acquired by the trustee for the collateral trust bondholders are included in the mileage of this company hereinbefore mentioned.

(NOTE.—The requirements mentioned in item 8, (*c*) of section 1, of the tax law of 1893, (item 8, *c*, of the form of annual return),
71 is complied with by the company by "Schedule B" annexed hereto, in so far as the statute requires information concerning the length of lines in the different counties in the State of Indiana, in which the lines of the company are located. The company will also furnish the State board with information concerning

the mileage in the respective townships, if it is desired, but the company submits that it ought to be relieved from its obligation to furnish this latter information to the State board for the reason that the company has, since April 1, 1894, made out township tax-lists covering all its property in each township, and has sent these lists to the county auditors of the counties in which the townships are situated. These township lists give the length of the lines in each township. The State auditor has no duties with respect to townships, his duty being merely to distribute between counties, by section 9, of the tax law of 1893, and the county auditors distributing between townships.

To require the company, under the circumstances, to furnish this information to the State board would be to require it to furnish this information a second time for the purpose of enabling the State auditor to do that which the company has already done for him, viz: to inform the county auditors of the mileage in the townships.)

"SCHEDULE A."

Real Estate of the Western Union Telegraph Company.

Location.	Cost, per ledger.	Assessed value.
Broadway and Dey street, New York	$2,823,039 52	$1,500,000 00
Fifth avenue and Twenty-third street, New York	202,524 74	290,000 00
16 and 18 Broad street, New York	191,518 77	300,000 00
Fifty-fifth street, New York	20,384 43	2,000 00
Chicago	1,666,207 10	
Chicago boulevard	2,500 00	590 00
Philadelphia	30,866 67	36,000 00
Sacramento, Cal.	5,500 00	4,700 00
Plaister Cove, C. B.	2,120 11	
Sandy Hook, N. J.	7,349 62	None.
Highlands, N. J.	3,463 00	
Avila, Cal.	173 68	
Cisco, Cal.	60 00	
North Sydney, C. B.	4,040 00	
Petersburg, Pa.	150 00	
Ashe Bay, N. S.	501 50	
White River Junction, Vt.	443 34	
Signal station, Cape Henlopen	750 00	
Cape Canso, N. S.	12,196 23	
Pt. Hastings, C. B.	1,001 65	
Fire Island observatory	3,370 50	
Marine building, Sandy Hook	1,372 08	
Total	$4,979,533 74	

72 "EXHIBIT B."

SCHEDULE B.

Miles of Line in Each County, State of Indiana.

Counties.	Miles of poles.	Miles of wire.	Value of instruments and office furniture.
Adams	34.30	142.30	$120
Allen	149.60	1,277.40	654
Bartholomew	65.80	334.20	180
Benton	93.70	568.00	320
Blackford	27.10	74.50	70
Boone	104.70	600.90	230
Carroll	120.20	382.80	255
Cass	163.20	679.80	910
Clark	66.70	468.50	350
Clay	56.90	249.40	205
Clinton	128.50	403.30	420
Crawford, R. R. Co. owns poles		25.50	50
Daviess	56.70	222.30	120
Dearborn	42.50	335.60	230
Decatur	53.40	163.40	150
De Kalb	99.10	779.20	280
Delaware	64.50	186.70	350
Dubois, R. R. Co. owns poles		44.40	100
Elkhart	110.60	760.30	451
Fayette	40.00	131.00	105
Floyd	12.00	59.80	170
Fountain	103.40	263.10	290
Franklin	31.00	41.50	40
Fulton	77.80	321.80	160
Gibson	49.70	229.50	330
Grant	72.30	237.30	385
Greene	69.00	127.00	160
Hamilton	81.70	235.40	180
Hancock	101.00	510.10	150
Harrison, R. R. Co. owns poles		16.90	None.
Hendricks	81.00	480.80	220
Henry	146.60	628.40	300
Howard	51.40	229.40	285
Huntington	53.00	347.50	170

"*Exhibit B*"—Continued.

Counties.	Miles of poles.	Miles of wire.	Value of instruments and office furniture.
Jackson	79.50	516.10	$140
Jasper	68.70	127.70	130
Jay	34.50	89.70	100
Jefferson	21.80	106.70	130
Jennings	59.40	459.70	90
Johnson	21.40	322.10	90
Knox	78.90	353.10	240
Kosciusko	110.40	884.20	355
La Grange	24.00	90.00	60
Lake	271.20	2,459.80	560
La Porte	272.00	1,963.50	807
Lawrence	88.40	325.40	190
Madison	106.50	368.70	570
Marion	209.80	1,438.50	6,990
Marshall	141.10	1,086.40	250
Martin	33.10	187.50	60
Miami	94.50	358.70	390
Monroe	29.20	58.40	150
Montgomery	122.70	276.10	395
Morgan	27.30	54.60	90
73 Newton	65.50	134.10	150
Noble	53.10	683.60	269
Orange	27.50	55.00	90
Owen	40.50	81.50	130
Parke	77.20	173.80	315
Perry, R. R. Co. owns poles	.....	8.40	30
Pike	13.50	68.80	60
Porter	205.70	1,859.80	415
Posey	78.10	142.60	175
Pulaski	44.20	353.10	120
Putnam	81.50	398.20	210
Randolph	62.70	204.40	340
Ripley	30.50	335.60	110
Rush	80.70	200.30	250
St. Joseph	192.10	970.70	491
Scott	22.50	176.80	70
Shelby	54.20	187.60	140
Spencer, R. R. Co. owns poles	.....	41.20	50
Starke	78.40	720.10	160
Steuben	39.50	102.50	140

"*Exhibit B*"—Continued.

Counties.	Miles of poles.	Miles of wire.	Value of instruments and office furniture.
Sullivan	66.20	200.00	$160
Tippecanoe	189.90	1,025.10	1,190
Tipton	44.60	183.80	220
Union	16.20	97.20	40
Vanderburgh	64.30	286.00	890
Vermillion	45.20	135.60	140
Vigo	77.70	490.90	890
Wabash	98.80	399.90	260
Warren	64.10	235.50	100
Warrick	6.00	46.20	20
Washington	27.60	55.20	40
Wayne	115.10	592.80	500
Wells	55.30	182.80	130
White	65.80	222.00	200
Whitley	77.00	649.20	190
Total	6,563.00	34,785.20	$28,862

STATE OF INDIANA, }
County of Marion, } ss:

John F. Wallick, district superintendent of the Western Union Telegraph Company, being duly sworn, on oath says that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893, according to his best information and belief.

JOHN F. WALLICK,
District Superintendent.

Subscribed and sworn to before me this 11th day of July, 1894.

JNO. M. BUTLER, JR.,
Notary Public.

74 This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

(Endorsed on the back:) Return of the Western Union Telegraph Co. under house bill No. 431, approved March 6, 1893. 1894. Filed July 11, 1894. J. O. Henderson, auditor of State.

"And now comes the plaintiff, by its attorneys, and files a demurrer to the defendant's answer to the supplemental complaint herein, which demurrer is in the words and figures following, that is to say:"

STATE OF INDIANA, *County of Marion,* } *ss:*

THE STATE OF INDIANA *vs.* THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290. Circuit Court.

Demurrer to Answer of the Defendant to the Supplemental Complaint.

The plaintiff demurs to the answer of the defendant to the supplemental complaint herein, and for cause of demurrer shows the court that the same does not state facts sufficient to constitute a defense to the said supplemental complaint.

Wherefore, etc.

WILLIAM A. KETCHAM,
Attorney General.

A. G. SMITH,
LEON O. BAILEY,
MERRILL MOORES,
Of Counsel.

And afterwards, to wit, on the 3d day of September, 1895, being the second judicial day of the September term, 1895, of said court, before the same honorable judge, the following proceedings were had herein:

"Come now the parties, by counsel, and the court being fully advised in the premises, sustains the plaintiff's demurrer to the defendant's answer to the supplemental complaint herein, to which ruling of the court the defendant at the time excepts."

75 And afterwards, to wit: on the 9th day of September, 1895, being the seventh judicial day of the September term, 1895, of said court, before the same honorable judge, the following proceedings were had herein:

THE STATE OF INDIANA *vs.* THE WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Judgment.

Comes now the plaintiff by its attorney general and by Alonzo Greene Smith, Leon O. Bailey and Merrill Moores of counsel, and

now comes also the defendant, by Butler, Snow & Butler and Samuel O. Pickens, its attorneys, and the plaintiff now in open court advises and informs the court that it does not desire to insist upon its application for the appointment of a receiver, but for the purposes of the trial herein waives and withdraws the allegations of the complaint touching the prayer for the appointment of a receiver, without prejudice, however, to the right of said plaintiff to renew such application hereafter in aid of the judgment, in the event that it shall hereafter seem desirable or necessary to renew such application. And the defendant thereupon refused to plead further and elected to abide by its answer. And this cause thereupon coming on to be heard for the purpose of assessing the plaintiff's damages only, and having been specially set for trial at this time, is now submitted to the court for finding and judgment without the intervention of a jury, and the court having heard the evidence and being fully advised in the premises finds that there is due for the taxes assessed against the defendant in the several counties of the State named in the complaint for the year 1893, together with the penalties thereon, the sum of fifty-five thousand seven hundred and seventy-four dollars and forty-four cents ($55,774.44), and that there is due for the taxes for the year 1894, together with the penalties thereon, the sum of fifty-three thousand eight hundred and ten dollars and ninety-one cents ($53,810.91), and the court now assesses the plaintiff's damage at the sum of one hundred and nine thousand five hundred and eighty-five dollars and thirty-five cents ($109,585.35), to which finding and assessment of damages the defendant at the time excepts.

76 It is therefore considered and adjudged by the court that the plaintiff for its own use and benefit, and for the use and benefit of the several counties, townships and cities within the State in whose favor taxes were assessed against said defendant during the years 1893 and 1894, do have and recover of the defendant, The Western Union Telegraph Company, the sum of one hundred and nine thousand five hundred and eighty-five dollars and thirty-five cents ($109,585.35), its damages so assessed as aforesaid, together with its costs and charges in this behalf laid out and expended, taxed at —— dollars ($——).

All of which is finally considered, ordered and adjudged.

Inasmuch, however, as it is made known and shown to the court by the agreement of the parties, that there is now pending in the Supreme Court of the United States a writ of error to the supreme court of Indiana, in the cause of The Western Union Telegraph Company, plaintiff in error, *vs.* Thomas Taggart, as auditor of Marion county, Indiana, *et al.*, defendants in error, being cause No. 15952, in which the validity of the tax laws of the State of Indiana and the validity of the taxes embraced in this action is denied by the defendant herein, it is now ordered by the agreement of the parties, the defendant not waiving its right of appeal or any rights incident thereto, that no execution or other process shall issue upon the above judgment until action shall have been had by the said Supreme Court of the United States upon said writ of error, pro-

vided said cause shall be decided on or before the 15th day of December next, and in the event said judgment of the supreme court of Indiana shall be reversed, the defendant shall be at liberty on three days' notice to the attorney general, to move to redocket this cause and to set aside the judgment herein and to reconsider the rulings had herein, and in the event said judgment shall be affirmed, then and in such event, or at any time after the 15th day of December next, the plaintiff may cause execution to issue, and take such other steps as it may be advised shall be necessary or proper to enforce its rights in the premises.

EDGAR A. BROWN, *Judge.*

And afterwards, to wit, on the 2d day of November, 1895, being the fifty-fourth judicial day of the September term, 1895, of said court, before the same honorable judge, the following proceedings were had herein, that is to say:

"Come now the parties, the plaintiff by its attorney gen-
77 eral, A. G. Smith, L. O. Bailey and Merrill Moores, and the defendant by A. H. Snow and S. O. Pickens, and the defendant now files its motion for a new trial of this cause, as follows, viz:"

STATE OF INDIANA:

In the Marion Circuit Court, September Term, 1895.

THE STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Motion for a New Trial.

The defendant moves the court to set aside the finding and judgment heretofore made and entered herein, and to grant a new trial of said cause upon the following grounds, to wit:

1. Because the decision of the court is not sustained by sufficient evidence;
2. Because the finding of the court is not sustained by sufficient evidence;
3. Because the judgment of the court is not sustained by sufficient evidence;
4. Because the finding and judgment of the court is not sustained by sufficient evidence;
5. Because the decision of the court is contrary to law;
6. Because the finding of the court is contrary to law;
7. Because the judgment of the court is contrary to law;
8. Because the finding and judgment of the court are contrary to law;
9. Because the damages assessed are excessive;
10. Because there is error in the assessment of the amount of recovery in this, that the assessment of the amount of recovery is too large;

11. For error of law occurring at the trial, and at the time excepted to by the defendant, in this, to wit, the error of the court in overruling the second paragraph of the defendant's motion to modify the finding and judgment herein;

12. For error of law occurring at the trial, and at the time excepted to by the defendant, in this, to wit, the error of the court in overruling the third paragraph of the defendant's motion to modify the finding and judgment herein;

13. For error of law occurring at the trial, and at the time excepted to by the defendant, in this, to wit, the error of the court in overruling the fourth paragraph of the defendant's motion to modify the finding and judgment herein;

78 14. For error of law occurring at the trial, and at the time excepted to by the defendant, in this, to wit, the error of the court in admitting in evidence over the objection of the defendant, for irrelevancy and immateriality, the agreed statement of facts as to the balances and aggregate of the principal amount of the taxes which would be due from the defendant for the years 1893 and 1894, if chapter one hundred and seventy-one (171) of the Acts of 1893 were valid, so that the taxes due from the defendant might properly be calculated under its provisions;

15. For error of the law occurring at the trial, and at the time excepted to by the defendant, in this, to wit, the error of the court in excluding, upon the objection of the plaintiff that the same was irrelevant and immaterial, the agreed statement of facts to the effect that at the time of the filing of the original complaint herein, and for a long time thereafter, there was in existence and effect an injunction order of this court in the case of Western Union Telegraph Company *vs.* Thomas Taggart, auditor, *et al.*, by which order the county auditors and the county treasurers of the counties named in the complaint were enjoined from collecting the amounts claimed in the complaint herein as taxes due from the defendant for the year 1893, pending the decision of the appeal of said cause of Western Union Telegraph Company *vs.* Thomas Taggart, auditor, *et al.*, in the supreme court of Indiana, and that immediately upon the dissolution of said injunction order a like injunction order was issued by the supreme court of Indiana pending the decision of the writ of error from the Supreme Court of the United States in said cause, which injunction order is still in full force; and to the effect that at the time of the filing of the supplemental complaint herein and at all times thereafter, there has been, and still is, in existence and effect an injunction order of the circuit court of the United States for the district of Indiana, in the case originally entitled Western Union Telegraph Company *vs.* John O. Henderson, auditor of State, and now entitled by substitution of defendant, Western Union Telegraph Company *vs.* Americus C. Daily, auditor of State, by which injunction order the auditor of State was, and still is,

79 enjoined from certifying to the county auditors of the counties named in the supplemental complaint the valuations made by the State board upon defendant's property in In-

diana under the provisions of chapter 171 of the Acts of 1893, for the year 1894, as apportioned to said counties.

Wherefore the defendant prays that said finding and judgment of the court heretofore entered herein be set aside and a new trial granted in said cause.

ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

"And thereupon the court being fully advised in the premises overrules the said motion for a new trial of this cause, to which ruling the defendant at the time excepts."

"And thereupon the defendant now files its motion to modify the finding and judgment herein, which motion is in the words and figures following:"

In the Marion Ci-cuit Court.

STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Motion to Modify the Finding and Judgment.

Paragraph 1. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein so that the amount for which such judgment shall be rendered shall be forty-four thousand, nine hundred and thirty-three and sixty-one one-hundredths dollars ($44,933.61), and proper penalties, if any penalties shall be finally adjudged due after hearing this motion, instead of one hundred and nine thousand, five hundred and eighty-five and thirty-five one-hundredths dollars ($109,585.35), for the reason that upon the admitted facts in this cause it appears that the amount due from the defendant, in the respective counties named in the complaint as taxes for 1893, reckoned under the provisions of chapter 171, Acts of 1893, exclusive of penalties, and deducting the amounts paid by the defendant on account of taxes for 1893, is twenty thousand, nine hundred and twenty-five and twenty-one one-hundredths dollars ($20,925.21), and the amount due from defendant in said counties as taxes for 1894, reckoned in the same manner and exclusive of penalties, after deducting the amounts paid by the defendant on account of such taxes, is twenty-four thousand, eight and forty one-hundredths dollars ($24,008.40).

80 Paragraph 2. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein so that such judgment shall be rendered without any penalties added in said judgment, that is for the total sum of forty-four thousand, nine hundred and thirty-three and sixty-one

one-hundredths dollars ($44,933.61), and no more, and for grounds of this paragraph of motion defendant says:

1. It appears by the record and admitted facts herein that the defendant has been diligently prosecuting suits in courts of competent jurisdiction for the purpose of determining the question of the constitutionality of the law under which such taxes are assessed, and that during the pendency of said cases, and ever since the alleged taxes herein sued for became due and payable, injunctions from such courts have been in force which prevented the collection of such taxes.

2. The penalty of fifty per cent. mentioned in chapter 171 of the Acts of 1893, is uncollectible for the reason that the said statute, if otherwise valid, whether it makes such penalty a substitute for all other penalties or is in addition thereto, or a penalty upon other penalties as well as upon the principal amounts, is, in so far as it purports to fix such penalty, unconstitutional and void—all other tax-payers of the State of Indiana except those mentioned in said statute being subject to a penalty in case of non-payment of taxes at the time fixed by statute of only ten or sixteen per cent., according to the character of the delinquency—in that it violates art. 1, secs. 1 and 12, art. 10, sec. 1, and art. 4, sec. 22, of the constitution of Indiana, and art. 14, sec. 1, of the Constitution of the United States.

3. Chapter 171 of the Acts of 1893, does not provide for the addition of any penalty whatever, in any suit brought by the Attorney General.

Paragraph 3. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the judgment and finding herein in case it shall be of opinion that any penalties are due from the defendant whatsoever, by striking out and omitting all sums included therein as penalties beyond a sum equal to sixteen per cent. of the amount of the balance found and adjudged to be due from defendant as balance of taxes for 1893, and beyond a sum
81 equal to ten per cent. of the amount of the balance found and adjudged to be due from the defendant as taxes for 1894, on the following ground:

1. That it appears from the admitted facts in this case that the defendant paid or tendered, prior to the third Monday in April, 1894, to the respective county treasurers of the counties named in the complaint herein, as taxes admitted to be due from the defendant for the year 1893, taking or offering to take a receipt "on account of" taxes for 1893, the following sums, to wit: Eleven thousand, six hundred and fifty-four and eighty-two one-hundredths dollars ($11,654.82.)

2. And that the defendant paid or tendered, prior to the third Monday of April, 1895, to the respective county treasurers of the counties named in the complaint herein as taxes admitted to be due from the defendant for the year 1894, taking or offering to take a receipt "on account of" taxes for 1894, the following sums, to wit:

Eleven thousand, five hundred and seven and seventy-five one-hundredths dollars ($11,507.75.)

3. But that in no county for either year did either or any of said amounts so paid or tendered equal the amount of the first installment of the taxes due from the defendant as taxes for the respective years reckoned according to the provisions of chapter 171, Acts of 1893.

4. The fifty per cent. penalty is unconstitutional and void for the reasons above stated.

Paragraph 4. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein, in case the court shall be of the opinion that any penalties are due from the defendant whatsoever, and in case the court shall further be of the opinion that a penalty of sixteen per cent. on the unpaid balance of the taxes of 1893 and a penalty of ten per cent. on the unpaid balance of the taxes of 1894, are not the sole and only penalties due from the defendant, by striking out and omitting all sums included therein as penalties, beyond a sum equal to fifty per cent. of the amount found and adjudged to be due from the defendant as the balance of the taxes for 1893 and 1894, on the ground that if any penalties are due from the defendant whatsoever, and if the sixteen per cent. upon the unpaid balance of the taxes of 1893, and ten per cent. upon the unpaid balance of the taxes for 1894, are not the sole and only penalties due from the defendant, and if the penalty of fifty per cent. mentioned in chapter 171 of the Acts of 1893, is not wholly void on account of said statute being unconstitutional in that respect, the fifty per cent. mentioned in said statute is a substitute for and includes all other penalties.

ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

82 And the court having heard the statement of counsel, and being fully advised thereon, now sustains the first paragraph of said motion, and thereupon orders and adjudges that the finding and judgment herein be modified by inserting and substituting in lieu of the amount and words "($55,774.44) fifty-five thousand seven hundred and seventy-four $\frac{44}{100}$ dollars," the amount and words "($36,409.79) thirty-six thousand four hundred and nine and $\frac{79}{100}$ dollars," where the first-mentioned amounts and words occur in said finding and judgment; and by inserting and substituting in lieu of the amount and words "($53,810.91) fifty-three thousand eight hundred and ten and $\frac{91}{100}$ dollars" the amount and words, viz., "($39,613.86) thirty-nine thousand six hundred and thirteen and $\frac{86}{100}$ dollars," where the amount and words "($53,810.91) fifty-three thousand eight hundred and ten and $\frac{91}{100}$" occur in said finding and judgment; and by inserting and substituting in lieu of the amount and words "($109,585.35) one hundred and nine thousand five hundred and eighty-five and $\frac{35}{100}$ dollars" the amount and words "($76,023.65) seventy-six thousand and twenty-three and

$\frac{65}{100}$ dollars," where the amount and words "($109,585.35) one hundred and nine thousand five hundred and eighty-five and $\frac{35}{100}$," occur in said finding and judgment, and the judgment is hereby diminished and remitted to the extent of the difference between the former and substituted amounts.

And the court, being fully advised in the premises, overrules the second, third and fourth paragraphs of the defendant's said motion to modify the finding and judgment herein, to each of which rulings overruling each of said paragraphs of said motion, the defendant at the time excepts.

And the defendant now moves the court for a time within which to file a bill of exceptions herein, which motion is granted, and sixty (60) days are given within which to file a bill of exceptions herein.

And the defendant now prays an appeal of this cause to the supreme court of the State of Indiana, which is granted, and the amount of the appeal bond fixed at one hundred and twenty thousand dollars ($120,000.00), and John F. Wallick approved as
83 the sole surety thereon, and ten (10) days are given within which to file such appeal bond.

And the defendent now files its appeal bond in said penal sum, with said John F. Wallick as surety, which bond is now approved by the court, and it is in these words:

"Know all men by these presents, that The Western Union Telegraph Company, as principal, and John F. Wallick as surety, are held and firmly bound unto the State of Indiana in the penal sum of one hundred and twenty thousand dollars ($120,000), for the payment of which, well and truly to be made, the said obligors bind themselves, their successors, assigns, heirs, executors and administrators firmly by these presents.

The condition of this bond is such that, whereas, the Western Union Telegraph Company has on this 2d day of November, 1895, prayed an appeal to the supreme court of Indiana, from the circuit court of Marion county, State of Indiana, in the case of The State of Indiana *vs.* The Western Union Telegraph Company, No. 7290, in which case The Western Union Telegraph Company is defendant and The State of Indiana is plaintiff:

Now, therefore, if the Western Union Telegraph Company shall duly prosecute its appeal and abide by and pay the judgment and costs which may be rendered or affirmed against it, then this obligation to be void, otherwise to be in full force and effect.

In witness whereof, the said obligor, The Western Union Telegraph Company, has hereunto caused its corporate name to be signed and its seal to be affixed by John F. Wallick, as attorney-in-fact, and the said John F. Wallick has hereunto signed his name on the 2d day of November, 1895.

THE WESTERN UNION TELE- [SEAL.]
GRAPH COMPANY,
By JOHN F. WALLICK,
Dist. Superintendent and Attorney-in-fact.
JOHN F. WALLICK. [SEAL.]

Approved November 2, 1895.

EDGAR A. BROWN, *Judge.*"

Filed November 2, 1895.

EDGAR A. BROWN. *Judge.*

And be it remembered, that afterwards, to wit, on the 26th day of December, 1895, being the 46th judicial day of the November, 1895, term of the said court, the following proceedings were had in said cause, that is to say:

Comes now the defendant by its counsel and files its bill of exceptions, which is signed by the court, sealed, filed and made a part hereof, and is in the words and figures as follows, to wit:

84 STATE OF INDIANA:

In the Marion Circuit Court.

THE STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Defendant's Bill of Exceptions.

Be it remembered, that on the 9th day of September, 1895, being the 7th judicial day of the September term, 1895, of the said court, this cause came on to be heard for the purpose of assessing the plaintiff's damages only.

The plaintiff, to sustain the issue on that behalf, offered in evidence an agreed statement of facts as to the balance and aggregate of the principal amount of taxes assessed and levied against the defendant and upon its property for the years 1893 and 1894 under the provisions of chapter 171 of the Acts of 1893 of the General Assembly of the State of Indiana, it being at the time stated and agreed in open court that the facts stated in said agreed statement were true, as shown by the records in the office of the auditor of State of Indiana, but that the records showing the truth thereof were voluminous and were in constant use in such office, and that said agreed statement of facts was made and presented in lieu of the formal production of the original evidence shown by such records, in order to facilitate the trial of this cause and to prevent the interruption of the public business by producing such records in this court; to which evidence, and to the introduction thereof, the defendant at the time objected on the ground then stated to the court that the said agreed statement of facts was irrelevant and immaterial, because the said chapter 171 of the Acts of 1893 of the General Assembly of the State of Indiana, under which defendant's property was assessed for taxation for each of said years, upon which assessments the said taxes were computed and extended, is unconstitutional and void, and because the said taxes set forth in said agreed statement of facts, and each item thereof, are illegal, wrongful and void, which objection the court overruled,

to which ruling of the court the defendant at the time ex-
85 cepted; and thereupon the said agreed statement of facts was admitted and read in evidence over defendant's objection, and the said agreed statement of facts is in words and figures following, to wit:

STATE OF INDIANA:

In the Marion Circuit Court, September Term, 1895.

THE STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Agreed Statement of Facts.

It is agreed by and between the parties to the above-entitled cause that the evidence in said cause would establish the following facts:

That the balance of taxes assessed and levied against the defendant and upon its property for the year 1893 under and pursuant to the provisions of chapter 171 of the Acts of 1893 of the General Assembly of the State of Indiana, in the counties named in the original complaint herein, as shown by the tax duplicates in the offices of the county treasurers and county auditors of said counties, without penalties or interest, and after deducting all credits on account of payments made on said taxes in said counties for the year 1893, is the sum of twenty thousand nine hundred and twenty-five dollars and twenty-one cents ($20,925.21); the balance so assessed and levied against said defendant in each of said several counties being as specifically set forth in the complaint herein. And that the aggregate balance of taxes in the counties named in the supplemental complaint herein, computable and leviable upon the assessment and valuation for taxation of defendant's property in the State of Indiana for the year 1894, as made and apportioned to the said counties by the State board of tax commissioners of the State of Indiana at its session of 1894, under and pursuant to the provisions of chapter 171 of the Acts of 1893 of the General Assembly of the State of Indiana, without penalties or interest, and after deducting all credits on account of payments made on said taxes of defendant in said counties for the year 1894, is the sum of twenty-four thousand and eight dollars and forty cents ($24,008.40), the balance so assessed and levied against said defendant in each of said counties being as specifically set forth in the supplemental complaint herein.

86 And it is agreed and stipulated in open court that this agreed statement of facts may be admitted in evidence upon the hearing of this cause in lieu of the record and documentary evidence and all other proof of said facts, subject to objections and exceptions on the ground of immateriality and irrelevancy and the

invalidity of said act of the General Assembly of the State of Indiana.

WILLIAM A. KETCHAM,
Attorney General of Indiana.
ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

And thereupon the plaintiff rested.

And be it further remembered, that upon said hearing on said day the defendant offered in evidence an agreed statement of facts to the effect that at the time of the filing of the original complaint herein, and for a long time thereafter, that there was in existence and effect an injunction order of this court in the case of Western Union Telegraph Company *vs.* Thomas Taggart, auditor, *et al.*, by which order the county auditors and county treasurers of the counties named in the complaint were enjoined from collecting the amounts claimed in the complaint herein as taxes due from the defendant for the year 1893, pending the decision of the appeal of said cause of Western Union Telegraph Company *vs.* Thomas Taggart, auditor, *et al.*, in the supreme court of Indiana, and that immediately upon the dissolution of such injunction order a like injunction order was issued by the supreme court of Indiana pending the decision of the writ of error from the Supreme Court of the United States in said cause, which injunction order is still in full force: and to the effect that at the time of the filing of the supplemental complaint herein, and at all times thereafter there has been, and still is, in existence and effect an injunction order of the circuit court of the United States for the district of Indiana, in the case originally entitled Western Union Telegraph Company *vs.* John O. Henderson, auditor of State, and now entitled, by substitution of defendant, Western Union Telegraph Company *vs.* Americus C. Daily, auditor of State, by which injunction order the auditor of State was, and still is, enjoined from certifying to the county auditors of the counties named in the supplemental complaint the valuations made by the State board upon defendant's property in Indiana under the provisions of chapter 171 of the Acts of 1893, for the year 1894, as apportioned to said counties. It being, at
87 the time, stated and agreed in open court, that the facts stated in said agreed statement were true as shown by the records of the suits therein referred to on file in the courts named, but that said records could not readily be produced in this court, and that said agreed statement of facts was made and presented in lieu of the formal production of the original evidence shown by such records in order to facilitate the trial of this cause.

To which evidence so offered to be introduced by the defendant, and to the introduction thereof, the plaintiff at the time objected, on the ground that said agreed statement of facts was irrelevant and immaterial; which objection the court sustained, to which ruling of the court in sustaining said objection the defendant at the time excepted. And the said agreed statement of facts so offered in evi-

dence by the defendant and excluded by the court is in words and figures following, to wit:

STATE OF INDIANA:

In the Marion Circuit Court, September Term, 1895.

THE STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Agreed Statement of Facts.

It is agreed by and between the parties to the above-entitled cause that the evidence would establish the following facts:

That at the time of the filing of the original complaint herein, and for a long time thereafter, there was in existence and effect an injunction order of the circuit court of Marion county, Indiana, in the case of Western Union Telegraph Company *vs.* Thomas Taggart, auditor of Marion county, Indiana, *et al.*, by which order the county auditors and county treasurers of the counties named in the original complaint herein were enjoined and prevented from collecting the amounts claimed in said complaint as taxes due from the defendant for the year 1893, pending the decision of the appeal of said cause of Western Union Telegraph Company *vs.* Thomas Taggart, auditor, *et al.*, in the supreme court of the State of Indiana, and that immediately upon the dissolution of said injunction order a like injunction order was, with due notice to the defendants in said cause, issued by the said supreme court of the State of Indiana pending the decision of the writ of error duly issued in said cause from the Supreme Court of the United States to the supreme court of the State of Indiana for the removal of said cause to the Supreme Court of the United States, which injunction order has ever since been, and still is, in force and effective against the auditors and treasurers of said counties.

88 And that at the time of the filing of the supplemental complaint herein, and at all times thereafter, there has been, and still is, in existence and in force, a temporary injunction order of the circuit court of the United States for the district of Indiana pending the litigation in the case originally entitled Western Union Telegraph Company *vs.* John O. Henderson, auditor of State, and now entitled, by substitution of defendant, Western Union Telegraph Company *vs.* Americus C. Daily, auditor of State, by which injunction order the auditor of State of the State of Indiana was, and still is, enjoined from certifying to the county auditors of the counties named in the supplemental complaint herein the valuation and assessment for taxation of defendant's property in Indiana for the year 1894, made and apportioned to said counties by the State board of tax commissioners of the State of Indiana at its session of 1894, under the provisions of chapter 171 of the Acts of 1893 of the General Assembly of the State of Indiana.

And it is agreed and stipulated by the parties in open court that

this agreed statement of facts may be offered in evidence upon the hearing of this cause in lieu of the record and documentary evidence and all other proof of said facts, subject to objections and exceptions on the ground of immateriality and irrelevancy.

WILLIAM. A. KETCHAM,
Attorney General of Indiana.
ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

And be it further remembered, that upon said hearing on said day the defendant offered in evidence an agreed statement of facts showing that the defendant paid or tendered prior to the third Monday of April, 1894, to the respective county treasurers of the counties named in the complain- therein, as taxes admitted by the defendant to be due from the defendant in said counties for the year 1893, taking or offering to take receipts therefor "on account of" taxes for the year 1893, aggregating the sum of eleven thousand six hundred and fifty-four dollars and eighty-two cents
89 ($11,654.82); and that the defendant paid or tendered prior to the third Monday of April, 1895, to the respective county treasurers of said counties, as taxes admitted by the defendant to be due from the defendant in said counties for the year 1894, taking, or offering to take, receipts therefor "on account of" taxes for the year 1894, aggregating eleven thousand five hundred and seven dollars and seventy-five cents ($11,507.75); it being agreed at the time in open court that the balances shown in the complaint and supplemental complaint, respectively, to be due, were ascertained by crediting on the taxes assessed the amounts so paid by the defendant in each of said years.

Said agreed statement of facts was admitted in evidence, and is in the words and figures following, to wit:

STATE OF INDIANA:

In the Marion Circuit Court.

THE STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Agreed Statement of Facts.

It is agreed by and between the parties to the above-entitled cause that the defendant paid or tendered prior to the third Monday of April, 1894, to the respective county treasurers of the counties named in the complaint herein, as taxes admitted by the defendant to be due from the defendant in said counties for the year 1893, taking or offering to take receipts therefor "on account of" taxes for the year 1893, aggregating the sum of eleven thousand six hundred and fifty-four dollars and eighty-two cents ($11,654.82).

And that the defendant paid or tendered prior to the third Monday of April, 1895, to the respective county treasurers of the counties named in the complaint herein, as taxes admitted by the defendant to be due from the defendant in said counties for the year 1894, taking or offering to take receipts therefor "on account of" taxes for the year 1894, aggregating eleven thousand five hundred and seven dollars and seventy-five cents ($11,507.75).

And it is agreed and stipulated by the parties in open court that this agreed statement of facts may be offered in evidence upon the hearing of this cause in lieu of record and documentary evidence and all other proof of said facts, subject to objections and exceptions on the ground of immaterialty and irrelevancy.

WILLIAM A. KETCHAM,
Att'y Gen'l of Ind., Attorney for Plaintiff.
ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

90 And this was all the evidence given in this cause.

And be it further remembered, that on the 2d day of November, 1895, being the 54th judicial day of the September term, 1895, of said court, the defendant filed its motion to modify the finding and judgment of the court in said cause, which motion is in words and figures following, to wit:

In the Marion Circuit Court.

STATE OF INDIANA
vs.
WESTERN UNION TELEGRAPH COMPANY. } No. 7290.

Paragraph 1. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein so that the amount for which said judgment shall be rendered shall be forty-four thousand, nine hundred and thirty-three and sixty-one one-hundredths dollars ($44,933.61), and proper penalties, if any penalties shall be finally adjudged due after hearing this motion, instead of one hundred and nine thousand, five hundred and eighty-five and thirty-five one-hundredths dollars ($109,585.35), for the reason that upon the admitted facts in this cause it appears that the amount due from the defendant, in the respective counties named in the complaint as taxes for 1893, reckoned under the provisions of chapter 171, Acts of 1893, exclusive of penalties, and deducting the amounts paid by defendant on account of taxes for 1893, is twenty thousand, nine hundred and twenty-five and twenty-one one-hundredths dollars ($20,925.21), and the amount due from the defendant in said counties as taxes for 1894, reckoned in the same manner, and exclusive of penalties, after deducting the amounts paid by the defendant on

account of such taxes, is twenty-four thousand, eight and forty one-hundredths dollars ($24,008.40).

Paragraph 2. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein so that such judgment shall be rendered without any penalties added in said judgment, that is, for the total sum of forty-four thousand, nine hundred and thirty-three and sixty-one one-hundredths dollars ($44,933.61), and no more, and for grounds of this paragraph of motion defendant says:

91 1. It appears by the record and admitted facts herein that the defendant has been diligently prosecuting suits in courts of competent jurisdiction for the purpose of determining the question of the constitutionality of the law under which such taxes are assessed, and that during the pendency of said cases, and ever since the alleged taxes herein sued for became due and payable, injunctions from such courts have been in force which prevented the collection of such taxes.

2. The penalty of fifty per cent. mentioned in chapter 171 of the Acts of 1893, is uncollectible for the reason that the said statute, if otherwise valid, and if it makes such penalty a substitute for all other penalties or in addition thereto, or a penalty upon other penalties as well as upon the principal amount, is, in so far as it purports to fix such penalty, unconstitutional and void, all other taxpayers of the State of Indiana except those mentioned in said statute being subject to a penalty in case of non-payment of taxes at the time fixed by statute of only ten or sixteen per cent., according to the character of the delinquency, in that it violates article 1, sections 1 and 12, article 10, section 1, and article 4, section 22, of the constitution of Indiana, and article 14, section 1, of the Constitution of the United States.

3. Chapter 171 of the Acts of 1893, does not provide for the addition of any penalty whatever, in any suit brought by the attorney general.

Paragraph 3. The defendant, not admitting, but expressly denying, that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein, in case it shall be of opinion that any penalties are due from the defendant whatsoever, by striking out and omitting all sums included therein as penalties beyond a sum equal to 16 per cent. of the amount of the balance found and adjudged to be due from the defendant as balance of taxes for 1893, and beyond a sum equal to 10 per cent. of the amount of the balance found and adjudged to be due from the defendant as taxes for 1894, on the following ground:

1. That it appears from the admitted facts in this case that the defendant paid or tendered, prior to the third Monday of April, 1894, to the respective county treasurers of the counties named in the complaint herein, as taxes admitted to be due from the defendant for the year 1893, taking or offering to take a receipt "on account of" taxes for 1893, the following sums, to wit, eleven

thousand six hundred and fifty-four dollars and eighty-two cents ($11,654.82).

92 2. And that the defendant paid or tendered, prior to the third Monday of April, 1895, to the respective county treasurers of the counties named in the complaint herein, as taxes admitted to be due from the defendant for the year 1894, taking or offering to take a receipt "on account of" taxes for 1894, the following sums, to wit, eleven thousand five hundred and seven dollars and seventy-five cents ($11,507.75).

3. But that in no county for either year did either or any of said amounts so paid or tendered equal the amount of the first installment of the taxes due from the defendant as taxes for the respective years, reckoned according to the provisions of chapter 171, Acts of 1893.

4. The 50 per cent. penalty is unconstitutional and void for the reasons above stated.

Paragraph 4. The defendant, not admitting, but expressly denying that the judgment herein was properly rendered for any amount whatsoever, moves the court to modify the finding and judgment herein, in case the court shall be of opinion that any penalties are due from the defendant whatsoever, and in case the court shall further be of opinion that a penalty of 16 per cent. on the unpaid balance of the taxes of 1893, and a penalty of 10 per cent. on the unpaid balance of the taxes for 1894, are not the sole and only penalties due from defendant, by striking out and omitting all sums included therein as penalties beyond a sum equal to 50 per cent. of the amount found and adjudged to be due from the defendant as the balance of the taxes for 1893 and 1894, on the ground that if any penalties are due from the defendant whatsoever, and if the 16 per cent. upon unpaid balance of the taxes for 1893, and 10 per cent. upon the unpaid balance of the taxes for 1894, are not the sole and only penalties due from the defendant, and if the penalty of 50 per cent. mentioned in chapter 171 of the Acts of 1893 is not wholly void on account of said statute being unconstitutional in that respect, the 50 per cent. mentioned in said statute is a substitute for and includes all other penalties.

ALPHEUS H. SNOW,
SAMUEL O. PICKENS,
Attorneys for Defendant.

93 And the court, being fully advised, sustained said motion as to the first paragraph thereof, and overruled the said motion as to the second, third and fourth paragraphs thereof, to which ruling of the court in overruling said motion as to the second, third and fourth paragraphs thereof, and the ruling of the court as to each of said second, third and fourth paragraphs separately, the defendant at the time excepted.

And be it further remembered, that on the 2d day of November, 1895, being the fifty-fourth judicial day of the September term, 1895, of said court, the defendant filed its motion to set aside the finding and judgment of the court in said cause, and for a new trial of said

cause, which motion was by the court overruled, to which ruling the defendant at the time excepted, and prayed the court to grant time in which to file bills of exceptions.

And the court, being duly advised, granted the defendant sixty days in which to file bills of exceptions.

And be it further remembered, that on the 26th day of December, 1895, the defendant presented to the Honorable Edgar A. Brown, sole judge of said court, this, its bill of exceptions.

And now, on this 26th day of December, 1895, being within the time heretofore named for the filing of bills of exceptions, this bill is signed, sealed, filed and made a part of the record in said cause.

EDGAR A. BROWN, *Judge.* [SEAL.]

STATE OF INDIANA, } *ss:*
Marion County, }

I, James W. Fesler, clerk of the circuit court, within and for the county aforesaid, do hereby certify that the foregoing transcript contains full, true and complete copies of all the entries of proceedings had, and of all the papers filed in said Marion circuit court belonging, on appeal, to this cause, numbered 7290, as appear from the records and files thereof, now in my custody and keeping.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court, at my office, in the city of Indianapolis, the 30th day of December, 1895.

[L. S.] JAMES W. FESLER, *Clerk.*

94 STATE OF INDIANA:

In the Supreme Court.

WESTERN UNION TELEGRAPH COMPANY, Appellant, }
vs.
THE STATE OF INDIANA, Appellee. }

Assignment of Errors.

The appellant avers that there is error in the proceedings and judgment in the above-entitled cause, in this:

1. The original complaint of appellee does not state facts sufficient to constitute a cause of action.

2. The supplemental complaint does not state facts sufficient to constitute a cause of action.

3. The court erred in overruling the appellant's demurrer to the supplemental complaint.

4. The court erred in sustaining the appellee's demurrer to the answer of appellant to the original complaint.

5. The court erred in sustaining appellee's demurrer to the answer of appellant to the supplemental complaint.

6. The court erred in overruling the appellant's motion for a new trial.

7. The court erred in overruling the second paragraph of appellant's motion to modify the finding and judgment of the court.

8. The court erred in overruling the third paragraph of appellant's motion to modify the finding and judgment of the court.

9. The court erred in overruling the fourth paragraph of appellant's motion to modify the finding and judgment of the court.

Wherefore appellant prays that the judgment be reversed.

SAMUEL O. PICKENS,
BROWN & WELLS,
Attorneys for Appellant.

Filed December 30, 1895.

ALEX. HESS, *Clerk.*

95 WESTERN UNION TELEGRAPH COMPANY, Appellant, *vs.* THE STATE OF INDIANA, Appellee. } No. 17831.

Joinder in Error.

The said appellee, The State of Indiana, says that there is no error in the record, and asks that the judgment be in all things affirmed.

WILLIAM A. KETCHAM,
Attorney General of Indiana.
ALONZO GREENE SMITH,
LEON O. BAILEY,
MERRILL MOORES, *Of Counsel.*

Filed December 30, 1895.

ALEX. HESS, *Clerk.*

96 And afterwards, to wit, on the same day, the above cause was submitted to the court for decision and notices thereof issued under rule 18 of said court.

And afterwards, to wit, on the 27th day of February, 1896, came appellant, by counsel, and filed its brief herein.

And on the same day came appellant, by counsel, and filed a copy of a brief filed in cause No. 17200.

And afterwards, to wit, on the 16th day of July, 1896, came the appellee, by counsel, and filed its brief herein.

And afterwards, to wit, on the 28th day of September, 1896, came appellant, by counsel, and filed its reply brief herein.

And afterwards, to wit, on the 2nd day of October, 1896, the same being the 113th judicial day of the May term, 1896, came the parties, by counsel, and the court, being sufficiently advised in the premises, gave the following opinion and judgment pronounced by Howard, J.; which opinion is in the words and figures following, to wit:

97 This was an action by the State for the collection of taxes due by the appellant. It was brought under provisions of

section 11 of an act supplementary to and amendatory of the general tax law of 1891, and providing for the taxation of telegraph, telephone, express, and other like corporations, approved March 6, 1893. Acts 1893, 374; R. S. 1894, sec. 8488.

The section reads as follows:

"SEC. 11. In case any such association, copartnership or corporation as named in this supplemental and amendatory act shall fail or refuse to pay any taxes assessed against it in any county or township in the State, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the State of Indiana by the prosecuting attorneys of the different judicial circuits of the State, on the relation of the auditors of the different counties of this State, and the judgment in said action shall include a penalty of fifty per cent. of the amount of taxes so assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over, or across which the line or route of such association, copartnership or corporation shall extend, or in any county where such association, company, copartnership or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership or corporation shall have refused to pay the whole of the taxes assessed against the same by said board of tax commissioners, or in case such association, company, copartnership or corporation shall have refused to pay the taxes or any portion thereof assessed to it, in any particular county or counties, township or townships, such action may include the whole or any portion of the taxes so unpaid in any county or counties, township or townships, but the attorney general may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions in each separate county or township, or join counties and townships, as he may prefer. All collection of taxes for or on account of any particular county made in any such suit or suits, shall be by said auditor of State accounted for as a credit to the respective counties for or
98 on account of which such collections were made by said auditor of State, at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the State; and upon such settlement being made, the treasurers of the several counties shall, at their next settlements, enter credits upon the proper duplicates in their offices, and at the next settlement with such county report the amount so received by him in his settlement with the State, and proper entries shall be made with reference thereto: Provided, however, that in any such action the amount of the assessment fixed by said State board of tax commissioners and apportioned to such county, or apportioned by the county auditor to any particular township, shall not be controverted."

The original complaint was filed by the attorney general May 7, 1894, and was for the collection of the taxes then remaining due by the appellant for the year 1893 in the several counties of the State in which the company owned property subject to taxation under

said act. The answer to this complaint, which was not filed until January 12, 1895, was an elaborate and detailed attack upon the validity of the law. A demurrer was sustained thereto June 11, 1895.

In relation to this answer the following admission is made in appellant's brief: "The allegations of the answer to the original complaint are in substance the same as the allegations in the telegraph company's complaint in the suit of the company against Taggart *et al.*, as auditors and treasurers of the various counties in the State, changed so as to constitute an answer."

As the contentions of the company in the suit referred to against Taggart *et al.* were overthrown and the validity of the law sustained, both in this court and in the Supreme Court of the United States, we may consider the decisions so rendered a sufficient reply to the arguments here repeated against the constitutionality of the law. W. U. Tel. Co. *vs.* Taggart, 141 Ind., 281; Same — U. S. —. That the proceedings before the State board of tax commissioners were in all respects regular also follows, for it is expressly admitted in the answer that in assessing appellant's property the State board proceeded in accordance with the requirements of the law so upheld.

99 On the same day on which the demurrer to the answer to the original complaint was sustained—that is, June 11, 1895—the attorney general, by leave of court, filed a supplemental complaint for the collection of appellant's taxes for 1894, those taxes having also become due and being then unpaid. To this supplemental complaint a demurrer was overruled on June 22, 1895. An answer to the supplemental complaint was filed June 27, 1895, and on September 3, 1895, a demurrer was sustained to the answer.

In the first paragraph of the answer to the supplemental complaint it is said: "The defendant, for answer to the supplemental complaint herein, adopts and makes a part hereof all the allegations of the answer to the complaint herein not specially relating to the assessment and collection of taxes for the year 1893 except as herein differently alleged." Since this answer to the supplemental complaint was filed, June 27, 1895, and the answer to the original complaint had been taken out by the sustaining of the demurrer thereto, on June 11, 1895, it would seem that the first answer could not thus be brought into the second answer by reference, as here attempted. Except as to the correctness of the ruling on demurrer, the first answer was wholly out of the record at the time when the second answer was filed. In addition, as we have already seen, the decision in the case of W. U. Tel. Co. *vs.* Taggart, *supra*, shows the first answer to have been bad.

In the answer to the original complaint it was specially averred that on the 19th day of December, 1893—that is, before the bringing of this action—the appellant had brought the suit in the case of W. U. Tel. Co. *vs.* Taggart, *supra*, to enjoin the county auditors and treasurers of the several counties in which the appellant owned property from proceeding to collect the taxes herein sued for, and that while

the injunction prayed for was denied, both in the trial court and in this court, yet that a temporary injunction was granted in each of the said courts until the final decision of the case in the successive appeals taken therein, and that such temporary injunction was still in force at the time of filing said answer.

In the answer to the supplemental complaint a similar averment was made as to injunction granted in the circuit court of the United States for the district of Indiana prohibiting the auditor of State from certifying to the several county auditors the valuations
100 of appellant's property as made by the State board of tax commissioners for the year 1894. W. U. Tel. Co. *vs.* Henderson, 68 Fed. Rep., 588.

Those averments were not made by way of pleas in abatement as to other suits pending in relation to the collection of the taxes for which this suit was brought; neither did the averments show that the injunction against the officers named had been in any way violated; but the intention seems to have been to argue that, in some manner not shown, The State of Indiana, the plaintiff in the case at bar, had been in such other suits enjoined from bringing her action in this case for the collection of the overdue taxes.

In so far as the action in the United States court is concerned, it is enough to say that the court could not and did not assume to have any jurisdiction to enjoin any action on the part of the State. As to the restraining order granted in the trial court and continued in this court in the case of W. U. Tel. Co. *vs.* Taggart, that had relation to county auditors and county treasurers. No attempt was made or could be made to control the action of the State, provided the law afforded her any remedy independent of the action of the officers against whom the restraining orders had been issued.

But the statute under consideration did furnish the State an additional and independent remedy for the collection of the taxes due her. It is provided in section 11, as we have seen, that in case any such corporation "shall fail or refuse to pay any taxes assessed against it, * * * in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the State of Indiana" for the collection of such taxes by the prosecuting attorney or the attorney general, according to the respective jurisdictions of these officers. In instituting this action the attorney general merely availed himself of the power given the State by the law itself. It will not be questioned that the emergency had arisen which was contemplated in the statute; the appellant company had failed and refused to pay the taxes assessed against it and which were overdue. The action for their collection might therefore be prosecuted in the name of the State, and this is what was done.

There is good reason, too, for the additional remedy thus
101 given. The general tax law contemplates the payment of all taxes in the year succeeding their assessment, easing such payment by providing that it may be made in two installments. A possibility of delinquency is also provided for, but only for one year longer, and for the first six months of delinquency a penalty

of ten per cent. is fixed, to be increased to sixteen per cent. for the second six months of delinquency.

It has been held that the law does not provide for interest on such delinquent taxes, but only the penalties named. Evansville, &c., R. R. Co. *vs.* West, 139 Ind., 254. There remain, therefore, in general, only the provisions for distress and sale of property, in order finally to make collection of taxes from dilatory, obdurate, or dishonest tax-payers. But the property of telegraph and other corporations provided for in this act is of such a nature that it or a part of it cannot be sold for the payment of taxes without manifest inconvenience to the public. Receivers may be appointed and other appropriate measures taken for the collection of debts due by such corporation, but only so that their business, in which the public and the State have a vital interest, may not be interrupted.

Louisville, &c., R'y Co. *vs.* Boney, 117 Ind., 501.

W. U. Tel. Co. *vs.* Massachusetts, 125 U. S., at p. 554.

The legislature, in its wisdom, conceived that for such properties it was advisable that there should be provision that collection might be made by suit, with appropriate penalties, so that a judgment might stand against the delinquent, to bear interest until such time as the debt might be paid or might be collected in receivership proceedings or otherwise. In this way the public treasury might, in some degree, be compensated for the loss of the use of its revenues caused by the failure to pay taxes when due. The properties being a special and peculiar class, special remedies are appropriate to bring about that equality required in the assessment and collection of taxes. All authorities concede that classification for purposes of taxation is not only permissable, but even necessary.

Home Ins. Co. *vs.* New York, 134 U. S., at p. 606.

R. R. Co. *vs.* Gibbes, 142 U. S., 386.

Cleveland, &c., R'y *vs.* Backus, 133 Ind., at p. 537.

Commonwealth *vs.* Delaware Div. Canal Co. (Pa.), 2 L. R. A., 798.

102 In the last-cited authority it is well said: "The power to impose taxes for the support of the Government, subject to the limitations of the Constitution, belongs to the legislature; the selection of the subjects, their classification, and the methods of collection are purely legislative matters. When the action of the legislature with respect to these matters is not repugnant to the Constitution, it would certainly be a case of the grossest inequality which would call for the interventions of the courts. It may be conceded, however, that classification should be made according to some reasonable, practical rule, drawn from experience, which would prevent a gross inequality in the burdens of taxation. * * * Absolute equality is of course unattainable; a mere approximate equality is all that can reasonably be expected. A mere diversity in the methods of assessments and collections, however, if these methods are provided by general laws, violates no rule of right if when these methods are applied the results are practically uniform.

If there is a substantial uniformity, however different the procedure, there is a compliance with the constitutional provisions; even when there may be some disparity of results, if uniformity is the purpose of the legislature, there is a substantial compliance; nor is classification necessarily based upon any essential differences in the nature or, indeed, the condition of the various subjects; it may be based as well upon the want of adaptability to the same methods of taxation, or upon the impracticability of applying to the various subjects the same methods, so as to produce just and reasonable uniform results, or it may be based upon well-grounded considerations of public policy."

Indeed, in our own tax law it has been found necessary, in order to secure just and uniform results, to classify the property of the State into no less than twelve distinct divisions, differing in various respects, according to the nature of the property, as to the modes of assessment or the modes of collection of the taxes thereon. The object in each case, however, has been to secure uniformity in the rate and assessment of the taxes, that all may pay in the same proportion upon the true cash value in each case.

Appellant makes particular complaint of the fifty per cent. penalty provided for in suits under the statute. What we have
103 said as to the nature of appellant's property and the difficulty in coercing payment of delinquent taxes due thereon will fully answer this objection. In the sale and redemption of other forms of property, in case of delinquency, there is often quite as heavy a penalty imposed before the property is finally relieved from the paramount tax lien. By sec. 56 of the general tax law (sec. 8466, R. S. 1894) the county auditor is required to add fifty per cent. to the valuation in case the property-owner has refused to list his property or subscribe to the oaths required. The validity of a similar penalty was upheld in Boyer *vs.* Jones, 14 Ind., 354. Other like penalties and heavy charges are imposed in different sections of the tax law where the property-holder has been neglectful or otherwise at fault in matters relating to the assessment or payment of his taxes. See numerous provisions of the tax law as to penalties, costs of redemption, &c., resulting from failure to pay taxes when due. Sections 150 to 225 of the general tax law of 1891 (sections 8568–8643, R. S. 1894).

In the event that one is called upon to pay a tax which he believes to be illegal he has two courses open to him. He may resist payment at the hazard of all penalties in case the decision shall be against him or he may pay the tax under protest, and then, in case the decision is in his favor, demand the return of his money. See Rumford Chemical Works *vs.* Ray (R. I.), 34 Atl. Rep., 814.

No one need pay any penalty except through his own wrongful act.

The Government is in need of its revenues, and these revenues will be paid promptly by all good citizens. In case of failure to comply with such duty such penalties will be imposed as will, in the judgment of the law-making power, best compel compliance with the law in each case, to the end that all the property-owners

of the State may bear their equal share of the public burden. Such penalties, as we have seen, are never imposed upon those that pay their taxes when due, the imposition of the penalty being an effort on the part of the law-makers to compel good citizenship on the part of all tax-payers that none may shirk the common duty. The validity of the penalty here complained of has, besides, been already affirmed by this court in the case of State *vs.* Adams Express Co., 144 Ind., —.

104 Other questions discussed by counsel have, as we think, been sufficiently considered by us in this and other cases recently decided. Indeed, in view of the decisions of this court and of the Supreme Court of the United States in relation to our present tax laws, we can find no merit in this appeal. There should be an end to litigation.

The judgment is affirmed.

105 It is therefore considered by the court that the judgment of the court below in the above-entitled cause be in all things affirmed at the cost of the appellant; all of which is ordered to be certified to said court.

And it is further considered by the court that the appellee recover of the appellant the sum of $— for its costs and charges in this behalf expended.

106 And afterwards, to wit, on the 15th day of October, 1896, being the 124th judicial day of said May term, 1896, came The Western Union Telegraph Company, appellant herein, and filed in the office of the clerk of the said supreme court its petition for a writ of error herein from the Supreme Court of the United States to the supreme court of Indiana; which petition is in the words and figures following, to wit:

107 In the Supreme Court of Indiana.

WESTERN UNION TELEGRAPH COMPANY
vs.
THE STATE OF INDIANA. } No. —.

Petition for Writ of Error.

To Honorable Leander J. Monks, chief justice of the supreme court of Indiana:

The Western Union Telegraph Company prays that a writ of error from the Supreme Court of the United States to the supreme court of Indiana in the above-entitled cause may be allowed by your honor as chief justice of the supreme court of Indiana, and for cause thereof alleges—

That by the record, opinion, and judgement in said cause it appears that the validity of a statute of the State of Indiana under the Constitution of the United States was drawn in question, and that the decision of said supreme court of Indiana upheld the validity

of said statute, and that there are therefore questions presented by the record, opinion, and judgement herein which are properly cognizable by the Supreme Court of the United States.

Wherefore petitioner prays for the allowance of the writ of error from the Supreme Court of the United States to the supreme court of Indiana, as above stated, and that your honor will sign the citation thereon.

October 15, 1896.

WESTERN UNION TELEGRAPH COMPANY.
CHAMBERS, PICKENS & MOORES,
Its Attorneys.

BROWN & WELLS, *Of Counsel.*

108 [Endorsed:] 17831. State of Indiana. In the supreme court. The Western Union Telegraph Company, appellant, *vs.* The State of Indiana, appellee. Petition for writ of error. Filed Oct. 15, 1896. Alex. Hess, clerk. Chambers, Pickins & Moores, att'ys for appellant.

109 And on the same day the said Western Union Telegraph Company, by its attorneys, filed in the office of the clerk of said supreme court the citation on said writ of error, duly signed by the Honorable Leander J. Monks, chief justice of the said supreme court, and acknowledgment of service of the said citation by the attorneys for the defendant in error, said citation and acknowledgment of service thereof being hereto next below attached, as follows:

110 UNITED STATES OF AMERICA:

To the State of Indiana:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, thirty days after the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Indiana, wherein The Western Union Telegraph Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the opinion and judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Leander J. Monks, chief justice of the supreme court of Indiana, this 15 day of October, in the year of our Lord one thousand eight hundred ond ninety-six.

LEANDER J. MONKS, *Ch. J.*

I hereby acknowledge service of the above citation this 15 day of October, A. D. 189–.

WILLIAM A. KETCHAM,
Att'y Gen'l of Indiana, for Defendants in Error.
MERRILL MOORES, *Of Counsel.*

111 [Endorsed:] State of Indiana. In the supreme court. The Western Union Telegraph Company, appellant, *v.* The State of Indiana, appellee. Citation. Filed Oct. 15, 1896. Alex. Hess, clerk. Chambers, Pickens & Moores, attorneys for appellant.

112 And the court, being duly advised, finds that there are questions involved in the record, proceedings, opinion, and judgment in this cause which are properly cognizable by the Supreme Court of the United States; a writ of error is allowed from the Supreme Court of the United States to the supreme court of Indiana in said cause, in conformity with the said petition, and the amount of bond on appeal is fixed at fifty thousand dollars.

And the said Western Union Telegraph Company now files in the office of the clerk of said supreme court a writ of error from the Supreme Court of the United States to the said supreme court of Indiana in this cause, said writ being hereto next below attached as follows:

113 UNITED STATES OF AMERICA:

The President of the United States of America to the supreme court of the State of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea and an appeal which is in the said supreme court of Indiana, before you, between The Western Union Telegraph Company and The State of Indiana, the validity of the act of the legislature of Indiana approved March 6, 1893, entitled "An act supplemental to and amendatory of an act entitled 'An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency,' approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight, joint stock associations, companies, copartnerships, and corporations transacting business in the State of Indiana, repealing sections 68, 69, 70, and 71 of said act and all laws in conflict therewith, and declaring an emergency," the same being chapter 171 of the Acts of 1893, is drawn in question, and the decision of the said supreme court of Indiana is in favor of the validity of said statute, and because *of* manifest error hath happened, to the great damage of the said Western Union Telegraph Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that
114 you have the same at Washington thirty days after the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that

error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, this 15th day of October, A. D. 1896.

Seal Circuit Court of the United States, District of Indiana.

NOBLE C. BUTLER,
Clerk of the Circuit Court of the United States for the District of Indiana.

The foregoing writ of error is allowed this 15 day of October, 1896.

LEANDER J. MONKS,
Chief Justice.

115 [Endorsed:] State of Indiana. In the supreme court. The Western Union Telegraph Company, plaintiff in error, *vs.* The State of Indiana, defendant in error. Writ of error. Filed Oct. 15, 1896. Alex. Hess, clerk. Smiley N. Chambers, Samuel O. Pickens, Charles W. Moores, attorneys for plaintiff in error.

116 And now the said Western Union Telegraph Company, appellant herein, files in the office of the clerk of said supreme court its bond on appeal in the penal sum of fifty thousand dollars, with John F. Wallick as surety, which said bond is now taken and approved by the Honorable Leander J. Monks, chief justice of the supreme court of Indiana, and is in the words and figures following, to wit:

117 In the Supreme Court of the United States.

WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
vs.
THE STATE OF INDIANA, Defendant in Error.

Know all men by these presents that The Western Union Telegraph Company, plaintiff in error, as principal, and John F. Wallick and —— ——, as sureties, are held and firmly bound unto The State of Indiana, the defendant in error in the above-entitled cause, in the sum of fifty thousand dollars; for the payment of which said obligors bind themselves, their successors, heirs, executors, and administrators, firmly by these presents.

The condition of this bond is such that whereas the plaintiff in error has sued out its writ of error from the Supreme Court of the United States to the supreme court of Indiana in the above-entitled cause: Now, therefore, if the plaintiff in error shall prosecute its writ of error to effect and if it fail to make its plea good shall answer all damages and costs thereon, then this obligation to be void; otherwise in full force and effect.

In witness whereof the Western Union Telegraph Company has caused its corporate name to be hereunto signed by John F. Wallick, its district superintendent, thereunto duly authorized, as principal, and the said John F. Wallick and —— —— have hereunto signed their names as sureties this 15 day of October, 1896.

WESTERN UNION TELEGRAPH CO.,
By JNO. F. WALLICK, *Att'y-in-fact.*
JNO. F. WALLICK.

Taken and approved by me this 15 day of October, A. D. 1896.
LEANDER J. MONKS, *Ch. J.*

118 [Endorsed:] Bond. Filed Oct. 15, 1896. Alex. Hess, clerk.

119 And afterwards, on the same day, the said Western Union Telegraph Company, by its attorneys, filed in the office of the clerk of said supreme court an assignment of errors in the Supreme Court of the United States of the writ of error herein, said assignment of errors being hereto next below attached as follows:

120 In the Supreme Court of the United States.

WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
vs.
THE STATE OF INDIANA, Defendant in Error.

In error to the supreme court of the State of Indiana.

Assignment of Errors.

The Western Union Telegraph Company for assignment of errors says that there is manifest error in the judgment and proceedings in this cause in this, to wit:

1. The supreme court of Indiana in its opinion and judgment rendered in this cause erred in holding and adjudging that the act of the legislature of the State of Indiana approved March 6, 1893, entitled—

"An act supplementary to and amendatory of an act entitled 'An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency,' approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight, joint stock associations, companies, copartnerships, and corporations transacting business in the State of Indiana, repealing sections 68, 69, 70, and 71 of said act and all laws in conflict therewith and declaring an emergency;"

Said act being chapter 171 of the Acts of Indiana of 1893, is a valid law and not in conflict with any provisions of the Constitution of the United States.

2. The supreme court of Indiana in its opinion and judgment

rendered in this cause erred in holding and adjudging that
121 the sections and provisions of said act of the legislature of Indiana, being chapter 171, Acts of Indiana of 1893, relating to and providing for the taxation of the telegraph companies and relating to and providing for the assessment and valuation for taxation by the State board of tax commissioners of the property of the Western Union Telegraph Company other than that designated by said act as "subject to local taxation within the State," and relating to and providing for the collection of the taxes and the penalties thereon, on such property from such company, provide for and secure to the said Western Union Telegraph Company the "due process of law" required by section 1 of the fourteenth amendment to the Constitution of the United States, touching the assessment and valuation of its said property lawfully subject to taxation in Indiana.

3. The supreme court of Indiana in its opinion and judgment rendered in this cause erred in holding and adjudging that the sections and provisions of said act of the legislature of Indiana, being chapter 171, Acts of Indiana of 1893, relating to and providing for the taxation of telegraph companies and relating to and providing for the assessment and valuation for taxation by the State board of tax commissioners of the property of the Western Union Telegraph Company other than that designated by said act as "subject to local taxation within the State," and relating to and providing for the collection of the taxes and the penalties thereon on such property from such company, do not deny to the said Western Union Telegraph Company "the equal protection of the laws" required by section 1 of the fourteenth amendment to the Constitution of the United States, touching the assessment and valuation of its said property lawfully subject to taxation in Indiana.

4. The supreme court of Indiana in its opinion and judgment rendered in this cause erred in holding and adjudging that the sections and provisions of said act of the legislature of Indiana, being chapter 171, Acts of Indiana of 1893, relating to and providing for the taxation of telegraph companies and relating to
122 and providing for the assessment and valuation for taxation by the State board of tax commissioners of the property of the Western Union Telegraph Company other than that designated by said act as "subject to local taxation within the State," do not violate article 1, section 8, of the Constitution of the United States, which provides that "the Congress shall have power * * * to regulate commerce with foreign nations and among the several States" by requiring the assessment and valuation for taxation by the State board of tax commissioners of the instrumentalities of interstate and international commerce owned and used by said company and the income and earnings of said company from interstate and international commerce under the guise of assessing a part of the property of said company lawfully subject to taxation within the State of Indiana.

Wherefore plaintiff in error prays that the decree of the supreme

court of Indiana may be in all things reversed, and all other proper relief.

October 15, 1896.

SMILEY N. CHAMBERS,
SAMUEL O. PICKENS,
CHARLES W. MOORES,
Attorneys for Plaintiff in Error.

WILLARD BROWN,
CHARLES W. WELLS,
Of Counsel.

123 [Endorsed:] Western Union Telegraph Company, plaintiff in error, *vs.* The State of Indiana, defendant in error. Assignment of errors in the Supreme Court of the United States. Filed Oct. 15, 1896. Alex. Hess, clerk. Smiley N. Chambers, Samuel O. Pickens, Charles W. Moores, attorneys for pl'ff in error.

124 STATE OF INDIANA:

Supreme Court.

I, Alexander Hess, clerk of the supreme court of the State of Indiana, certify the above and foregoing to be a true and complete transcript of the records and proceedings had, papers filed (excepting briefs), motions decided, rulings made, opinions delivered, judgments rendered, and all decrees and orders entered in the supreme court of Indiana in the above-entitled cause; also the original writ of error from the Supreme Court of the United States to the supreme court of Indiana in this cause, and the original citation to the defendant in error and acknowledgment of service thereof and the original assignment of errors in the Supreme Court of the United States on said writ of error and original bond, which said transcript annexed hereto and hereby returned, together with said original writ of error, original citation, and original assignment of errors and original bond, I hereby certify as and for my full return to said writ of error.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court of Indiana, at the city of Indianapolis, this 16th day of October, 1896.

[Seal Supreme Court, State of Indiana, MDCCCXVI.]

ALEXANDER HESS,
Clerk Supreme Court of Indiana.

Endorsed on cover: Case No. 16,428. Indiana supreme court. Term No., 649. The Western Union Telegraph Company, plaintiff in error, *vs.* The State of Indiana. Filed November 13th, 1896.

DEC 15 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1896.

Term No., 649.—Case No. 16428.

THE WESTERN UNION TELEGRAPH COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF INDIANA, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

SAMUEL O. PICKENS,
Attorney for Plaintiff in Error.

WILLARD BROWN,
CHARLES W. WELLS,
Of Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

Term No., 649.—Case No. 16428.

THE WESTERN UNION TELEGRAPH COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF INDIANA, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This action was brought by the State of Indiana against the Western Union Telegraph Company in the circuit court of Marion county, Indiana, to recover the taxes due from the telegraph company for the years 1893 and 1894, together with delinquent penalties thereon, under the act of the General Assembly of the State of Indiana approved March 6, 1893. The State recovered judgment for the sum of $76,023.65, the amount of the taxes and penalties thereon for the years named (Record, pp. 69 and 82). From this judgment the telegraph company appealed to the supreme court of the State, where the judgment was affirmed, in an opinion by that court set out in

the Record, pages 86 to 92 (44 N. E. R., 793). The case is brought to this Court by a writ of error (Record, p. 95). In 1891 the General Assembly of the State of Indiana enacted a statute governing the assessment and collection of taxes upon all properties within the jurisdiction of the State. Section 152 of that statute provides that any person or taxpayer may pay the full amount of the taxes charged against him on or before the third Monday in April, or may, at his option, pay the first installment on or before such third Monday and the remaining installment on or before the first Monday of November following, provided that in all cases where the first installment shall not be paid on or before the third Monday in April the whole amount unpaid shall become due and be returned delinquent and collected as provided by law, and there shall be a penalty added of 10 per cent. upon the amount of any installment not paid when due which the persons or property assessed shall pay, together with the cost of collection, and, if such taxes remain delinquent at the succeeding first Monday in November, there shall be a penalty of 6 per centum added to all such taxes that became delinquent at the preceding April and November settlements, and a penalty of 10 per centum only shall be added to the current delinquency on the first Monday in November.

The act of March 6, 1893, is a statute providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight joint stock associations, companies, copartnerships, and corporations transacting business in the State, and is intended, as specifically stated in the act, to take the place of sections 68, 69, 70, and 71 of the statute of 1891.

Section 11 of the act of 1893 is as follows:

"In case any such association, copartnership or corporation as named in this supplemental and amendatory act shall fail or refuse to pay any taxes assessed against it in any county or township in the State, in addition to other remedies

provided by law for the collection of taxes, an action may be prosecuted in the name of the State of Indiana by the prosecuting attorneys of the different judicial circuits of the State, on the relation of the auditors of the different counties of this State, and the judgment in said action shall include a penalty of fifty per cent. of the amount of taxes so assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over or across which the line or route of any such association, copartnership, company or corporation shall extend, or in any county where such association, company, copartnership or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership or corporation shall have refused to pay the whole of the taxes assessed against the same by said State board of tax commissioners, or in case such association, company, copartnership or corporation shall have refused to pay the taxes or any portion thereof assessed to it in any particular county or counties, township or townships, such action may include the whole or any portion of the taxes so unpaid in any county or counties, township or townships, but the attorney general may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions in each separate county or township, or join counties and townships, as he may prefer. All collection of taxes for or on account of any particular county, made in any such suit or suits, shall be by said auditor of State accounted for as a credit to the respective counties for or on account of which such collections were made by said auditor of State, at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the State; and upon such settlement being made, the treasurers of the several counties shall, at their next settlements, enter credits upon the proper duplicates in their offices, and at the next settlement with such county report the amount so received by him in his settlement with the State, and proper entries shall be made with reference thereto: *Provided, however*, That in any such action the amount of the assessment fixed by said State board of tax commissioners and apportioned to such county, or apportioned by the county auditor to any particular township, shall not be controverted."

In December, 1893, the Western Union Telegraph Company brought a suit in equity in the circuit court of Marion county, Indiana, against Thomas Taggart, as auditor of said county, and others, to enjoin the defendants as county auditors and county treasurers from entering upon the tax duplicate and collecting from the telegraph company the taxes claimed to be due from the company for the year 1893 upon the assessments of the company's property as made by the State board of tax commissioners under the said act of 1893, on the ground that the said act was void because in conflict with the Constitution of the United States and the constitution of the State of Indiana. That cause was finally decided in this court on the 18th day of May, 1896 (W. U. T. Co. *vs.* Taggart, 163 U. S., 1). Pending that suit, on the 7th day of May, 1894, this action was brought by the attorney general to recover the taxes for 1893.

In August, 1894, plaintiff in error filed a bill in the circuit court of the United States for the district of Indiana against the auditor of state of the State of Indiana to enjoin him from certifying to the auditors of the various counties the assessment of its property made by the State board of tax commissioners for the year 1894, on the ground of the unconstitutionality of the statute. A demurrer was sustained to the bill and the bill dismissed for want of equity. From this decree of the circuit court an appeal was prayed and granted to this court, and the case was filed and docketed February 17, 1896, as No. 448 of October term, 1896. The injunction which was granted pending the case in the circuit court was continued pending the appeal. The decision in the Taggart case having disposed of all the questions involved in the case against the auditor of State, the appeal was dismissed on the 7th of December, 1896. In the Taggart case the circuit court of Marion county granted an order enjoining the defendants in that suit from collecting the taxes

in controversy pending the appeal to the supreme court of the State, and the supreme court of the State granted an order enjoining the collection pending the writ of error in the Supreme Court of the United States. On the 11th of June, 1895, the State filed a supplemental complaint in the case now in hand for recovery of the taxes due from plaintiff in error for the year 1894.

The plaintiff in error demurred to the supplemental complaint, which was overruled, and the ruling excepted to (Record, pp. 53, 54). Plaintiff in error filed answers to both the original and supplemental complaints, averring substantially the same facts as to the unconstitutionality of the act of 1893 as were alleged in the bill of complaint in the Taggart case, changed so as to constitute an answer, and alleging the granting and the existence of the injunction orders in the Taggart case and the case against the auditor of State above referred to. The answer to the original complaint is in the Record, at pages 6 to 25, and the answer to the supplemental complaint at pages 54 to 58. Demurrers were sustained to these answers and exceptions reserved to the rulings. (Record, pp. 44 and 69.)

Before the bringing of this action, the telegraph company had tendered to the various tax-collectors in the counties in which its property was assessed for taxation sums in discharge of its taxes for the years 1893 and 1894 based upon the valuation of its property for the year 1892, which tenders were accepted on account of the company's taxes in some of the counties.

After the demurrers to the answers were sustained, plaintiff in error refusing to plead further, the cause came on for hearing for assessment of damages only. The case was submitted on agreed statements of fact (Record, pp. 78 to 82). The finding and judgment were for the State for $109,585.35. To the finding and judgment plaintiff in error excepted. (Record, p. 70.)

Plaintiff in error duly filed its motion for a new trial, which was overruled and the ruling excepted to (Record pp. 71–73). Among the grounds assigned for a new trial are that the finding and judgment are not sustained by the evidence; that the finding and judgment are contrary to law; that there is error in the assessment of the amount of recovery, in this, that the assessment of the amount of the recovery is too large. These are statutory grounds for a new trial under the Indiana code. Either of them present the question of the validity of the penalties in controversy in this cause.

Upon the overruling of the motion for a new trial plaintiff in error filed its motion in four paragraphs to modify the judgment. (Record, pp. 73–75.)

The first paragraph was to reduce the amount of the finding and judgment to $44,933.61 and proper penalties, if any penalties should be finally adjudged due. This paragraph was based upon an error in the amount of taxes supposed to be due from plaintiff in error at the time the judgment was rendered; which error was discovered by the parties upon recomputing the taxes.

The second paragraph of the motion was to modify the judgment by fixing the amount at $44,933.61, being the taxes found due upon the recomputation without any penalties, on the grounds, 1st, that it appeared from the record and admitted facts that the defendant had been diligently prosecuting suits in courts of competent jurisdiction for the purpose of determining the question of the constitutionality of the law under which the taxes were assessed, and that ever since the taxes became due and payable injunctions from such courts had been in force which prevented the collection of such taxes; 2d, that the penalty of 50 per cent. mentioned in said act of 1893 is uncollectible, for the reason that the said statute, if otherwise valid, whether it makes such penalty a substitute for all other penalties or is in addition thereto or a penalty upon other

penalties as well as upon the principal amounts, is, in so far as it purports to fix such penalty, unconstitutional and void, all other tax-payers of the State of Indiana except those mentioned in said act being subject to a penalty in case of non-payment of taxes at the time fixed by statute of only 10 and 16 per cent., according to the character of the delinquency, in that it violates article 1, sections 1 and 12; article 10, section 1, and article 4, section 22, of the constitution of Indiana, and article 14, section 1, of the Constitution of the United States; 3d, that the act of 1893 does not provide for the addition of any penalty whatever in any suit brought by the attorney general.

The third paragraph of the motion was to modify the finding and judgment, in case the court should find any penalties due whatsoever, by striking out all sums included in the finding and judgment as penalties beyond a sum equal to 16 per cent. of the amount of the balance of the taxes found to be due for the year 1893 and beyond a sum equal to 10 per cent. of the amount of the balance of taxes found to be due for the year 1894, because the 50 per cent. penalty is unconstitutional and void.

The fourth paragraph of the motion was to modify the judgment by striking out all sums included for penalties except for the 50 per cent. penalty, leaving that the sole and only penalty and in lieu of all other penalties.

The court sustained the motion to modify as to the first paragraph and overruled it as to all the others; to which ruling plaintiff in error excepted. (Record, p. 76.)

Judgment was thereupon entered for $76,023.65, which was made up as follows: $20,925.21, balance of taxes due for the year 1893; $3,348.02, the 16 per cent. penalty under the provision of section 152 of the statute of 1891; $12,136.61, the 50 per cent. penalty provided for by section 11 of the act of 1893; $24,008.40, balance of the taxes due for the year 1894; $2,400.84, the 10 per cent. penalty thereon, and $13,204.62, the 50 per cent. penalty. The 10

and 16 per cent. penalties aggregate $5,748.86, the 50 per cent. $25,341.23, and the total penalties $31,090.09.

Errors were assigned in the supreme court of the State that the original complaint did not state facts sufficient to constitute a cause of action; that the supplemental complaint did not state a cause of action (under the Indiana code sufficiency of a complaint may be first tested on such an assignment of error); that the court erred in overruling the demurrer to the supplemental complaint; that the court erred in sustaining the demurrers to the answers to the original and supplemental complaints; that the court erred in overruling the motion for a new trial, and that the court erred in overruling the second, third, and fourth paragraphs of the motion to modify the judgment. (Record, pp. 85, 86.)

The plaintiff in error contended in the supreme court of the State that the 50 per cent. penalty clause of the act of 1893 was invalid in that it was in conflict with section 1 of the fourteenth amendment of the Constitution of the United States, because it denies to the associations, copartnerships, and corporations named in the act the equal protection of the laws, and deprives such associations, copartnerships, and corporations of their property without due process of law. The supreme court of the State decided against this contention and upheld the statute and sustained the 50 per cent. penalty included in the judgment.

The questions as to whether the 50 per cent. penalty clause of the act of 1893 contravenes the Constitution of the United States, and as to the validity of the 50 per cent. penalty included in the judgment rendered against plaintiff in error, are involved in this writ of error.

ASSIGNMENT OF ERRORS.

Plaintiff in error assigns for error—

1st. That the supreme court of the State in its opinion and judgment rendered in this cause erred in holding and

adjudging that the act of March 6, 1893, relating to and providing for the assessment and valuation by the State board of tax commissioners of the property of the Western Union Telegraph Company other than that designated by said act as "subject to local taxation within the State," and relating to and providing for the collection of taxes and penalties thereon of the Western Union Telegraph Company and its property, does not deny to the said Western Union Telegraph Company the equal protection of the laws required by section 1 of the fourteenth amendment to the Constitution of the United States touching the assessment and valuation of its said property lawfully subject to taxation in Indiana.

2d. That the supreme court of Indiana in its opinion and judgment rendered in this cause erred in holding and adjudging that the sections and provisions of said act of 1893 relating to and providing for the taxation of telegraph companies and relating to and providing for the assessment and valuation for taxation by the State board of tax commissioners of the property of the Western Union Telegraph Company other than that designated by said act as "subject to local taxation within the State," and relating to and providing for the collection of the taxes and penalties thereon of the Western Union Telegraph Company and its property, provided for and secured for the said Western Union Telegraph Company the due process of law required by section 1 of the fourteenth amendment of the Constitution of the United States touching the assessment and valuation of its said property lawfully subject to taxation in Indiana.

3d. That the supreme court of Indiana in its opinion and judgment rendered in this cause erred in holding and adjudging that the sections and provisions of said act of 1893 relating to and providing for the taxation of telegraph

companies, and relating to and providing for the assessment and valuation for taxation by the State board of tax commissioners of the property of the Western Union Telegraph Company other than that designated by said act as "subject to local taxation within the State," and relating to and providing for the collection of the taxes and penalties thereon of the Western Union Telegraph Company and its property, do not violate article 1, section 8, of the Constitution of the United States, which provides that Congress shall have power to regulate commerce with foreign nations and among the several States by requiring the assessment and valuation for taxation by the State board of tax commissioners of the instrumentalities of interstate and international commerce owned and used by said company and the income and earnings of said company from interstate and international commerce under the guise of assessing a part of the property of said company lawfully subject to taxation within the State of Indiana.

ARGUMENT.

1. The provision of section 11 of the act of 1893, providing for the collection of a penalty of 50 per cent. of the delinquent taxes of the companies, copartnerships, and corporations and their properties named in the act, in addition to the ordinary penalties imposed upon all other tax-payers and their properties for the same delinquency, arbitrarily discriminates against said companies, copartnerships, and corporations and their property as compared with all other tax-payers and property in the State, in that thereby the said companies, copartnerships, and corporations are necessarily subject to unequal, ununiform, and greater exactions for the support of the government than are all other tax-payers, and therefore denies to the said companies, copartnerships, and corporations and to plaintiff in error the equal protection of the laws, in contravention of the fourteenth amendment of the Constitution of the United States.

The statute of 1891, which relates to the assessment and collection of taxes against the property of all other persons and corporations except those enumerated in the act of 1893, provides, in case of delinquency by any tax-payer, for the collection of uniform penalties of 10 and 16 per cent. depending upon the character of the delinquency. For similar delinquencies on the part of the associations, copartnerships, or corporations named in the act of 1893 the legislature has sought by the provisions of that act to impose a penalty of 50 per cent. By these statutes the legislature has declared that all property-owners and their property except telegraph companies, telephone companies, express companies, and palace and sleeping car companies shall be protected against any and all penalties for non-payment of taxes except the penalties of 10 and 16 per cent., and that as to the said excepted tax-payers they shall be subject to the payment of an additional penalty of 50 per cent. The fixing of the 10 and 16 per cent. penalty for the delinquency of all other tax-payers is a declaration that they shall not be subjected to any other penalty.

We maintain that the State cannot impose an ununiform and unequal penalty for the same delinquency any more than it can fix an unequal and ununiform rate of assessment, and that any statute of the State providing for such ununiform and unequal penalties would be in conflict with the provision of the Federal Constitution under consideration. Uniformity in the rate is fundamental in all laws for ad valorem property taxation.

"In the second place, it is of the very essence of taxation that it be levied with equality and uniformity, and to this end that there should be some system of apportionment. Where the burden is common, there should be common contribution to discharge it. Taxation is the equivalent for the protection which the Government affords to the persons and property of its citizens, and as all are alike protected, so all alike should bear the burden in proportion to the interests secured. * * * And when taxes are levied upon

property there must be an apportionment with reference to a uniform standard, or they degenerate into mere arbitrary exactions." (Cooley's Constitutional Limitations, 6th edition, 607.)

"As to all taxation apportioned upon property, there must be taxing districts, and within these districts the rule of absolute uniformity must be applicable" (*ib.*, 610). "But, whatever may be the basis of taxation, the requirement that it shall be uniform is universal." (*Ib.*, 615.)

Doubtless it will be urged that these fundamental rules as to uniformity and equality, laid down by the distinguished author on constitutional law, have reference to the assessment and rate of taxation. Certainly they do. But they are no less applicable to penalties and all other exactions from the citizen for the support of the Government. It was said by Mr. Justice Field, in County of San Mateo *vs.* Southern Pacific Railroad Co., 13 Fed. Rep., 722, in discussing the question of "the equal protection of the laws," as applied to the taxation of railroad companies, that—

"The 'equal protection of the laws' to any one implies not only that he has a right to resort, on the same terms with others, to the courts of the country for the security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts, but also that he is exempt from any greater burdens or charges than such as are equally imposed upon all others under like circumstances. This equal protection forbids unequal exactions of any kind, and among them that of unequal taxation."

It cannot be denied that a tax law fixing one *rate* of taxation for one class of tax-payers, or for one class of property, and another and different rate for all other tax-payers or all other property, would be repugnant to the provision of the Federal Constitution forbidding any State to "deny to any person within its jurisdiction the equal protection of the laws." Are the laws of a State fixing one penalty for delinquency for one class of tax-payers and another and different penalty for a like delinquency on the part of all

other tax-payers any less under the condemnation of the Constitution?

The universal requirement of uniformity and equality in all just and valid systems of taxation is based upon the natural and inalienable right of every citizen that he shall not be required to contribute more than his *proportion* for the support of government, which is supposed to give its protection to all citizens alike. The 10 per cent. penalty, the 16 per cent. penalty, and the 50 per cent. penalty all go into the treasury for the support of the government the same as the *taxes* levied and collected. When the penalties are collected they become part of the taxes, and are so treated by the State. The section of the act under consideration expressly provides that the 50 per cent., when collected, shall go into the general fund of the State.

The act of March 18, 1875, of the State of Pennsylvania, after providing that taxes assessed and levied upon real estate shall be a lien on such real estate from the time of said levy, and shall have priority to any mortgage thereon, provides that if such taxes remain unpaid after the first day of September in any year an additional sum of 5 per cent. shall be added thereto, and if said taxes remain unpaid after the first day of October in any year an additional sum of 5 per cent. shall be added thereto.

In the appeal of The City of Titusville, 108 Pa. St., 600, it was held that such additional sums added for delay in payment *become part of the taxes.*

The penalties provided by the tax laws of Indiana, therefore, are burdens or exactions laid upon the citizen for the support of the government, and must be governed by the rule of equality and uniformity.

Judge Cooley says:

"*Every burden* which the State imposes upon its citizens with a view to revenue, either for itself or for any of the municipal governments or for the support of the governmental machinery in any of the political divisions, is *levied*

under the power of taxation, whether imposed under the name of tax or under some other designation."

Constitutional Limitations, 6th ed., 611.

Need this question be argued further? If this is not denial of the equal protection of the laws, then we cannot conceive of a State legislative enactment imposing burdens or exactions for support of government which would conflict with the Federal inhibition.

In concluding what we have had to say upon this question, we beg to submit an illustration which will plainly show how unequal the burdens of government must rest upon property-owners in this State, if this provision of the act in question is upheld. The property ("railroad track" and "rolling stock") of the Cincinnati, Fort Wayne and Louisville Railroad Company was assessed for taxation, for the year 1893, at $2,083,405, say, in round numbers, $2,000,000, and the lines of appellant were assessed at $2,297,652, say, in round numbers, $2,000,000. The State tax levy for that year was 32 cents on the one hundred dollars, which would make the taxes to be paid by each of these companies, for the support of the State government, $6,400.

Now suppose the taxes of each of these companies on this assessment became delinquent; under the tax laws of the State the railroad company would be compelled to pay for the support of the State government the $6,400 plus 10 per cent. thereon, or $7,040, while the telegraph company would be compelled to pay the $6,400 plus 50 per cent., or $9,600; and if the attorney general's contention, as evidenced by the judgment in this case, is sound, the telegraph company would have to pay the $6,400 plus 10 per cent. plus 50 per cent. upon the $6,400 *and* upon the 10 per cent. thereof, making a total of $10,560.

We do not deny the power of the legislature to classify property for the purposes of taxation, but such classifica-

tion must be reasonable, not arbitrary. A classification which necessarily subjects the members of the class to additional and much greater contributions for the support of the government than all other persons are subject to in the same district would be illegal.

"Given a tax and a district, the sum demanded of any one person or laid upon any one parcel of property must have fixed relation to the whole tax, as well as that demanded of every other person or laid upon every other piece of property."

Cooley on Taxation, 180.

The rate of assessment must be equal and uniform throughout the district for which the tax is levied, to the end that the burden may be as nearly equal as practicable. (Adamson *vs.* Auditor, 9 Ind., 174; Conwell *vs.* O'Brien, 11 Ind., 419; Covington Drawbridge Co. *vs.* Auditor, 14 *id.*, 331; Bright *vs.* McCollough, 27 *id.*, 223.)

We deny the power of the State to impose upon the members of a certain class of tax-payers (or, rather, upon certain members of a class, for other owners of unit properties, such as railroad companies and bridge companies, are exempt from the 50 per cent. penalty) burdens for delinquencies in the payment of taxes greatly more onerous than are imposed upon all other tax-payers of the State for exactly similar delinquencies.

Under the scheme of taxation provided for by the tax laws of the State of Indiana, all property is required to be assessed for taxation at its true cash value.

The constitution of the State provides that there shall be a uniform and equal rate of assessment and taxation. It cannot be doubted that if the statute of 1891 had required that the property of all tax-payers of the State, except telegraph companies, telephone companies, express companies, and palace car companies, should be assessed at 50 per cent. of its true cash value, and the act of 1893 had

required that the property of all telegraph companies, telephone companies, express companies, and palace car companies should be assessed at 75 per cent. of its true cash value, that there would have been a denial of the equal protection of the laws; yet the imposition of unequal burdens would have been no clearer in that case than in the case under consideration. The difference is not in substance or effect, but in form only.

Judge Sharswood, in Grim *vs.* School District, 57 Penn. St., 433, truly says: "Perfectly equal taxation will remain an unattainable good as long as laws and government and man are imperfect." Judge Cooley says: "But are there not cases which on their face are manifestly so unequal and unjust as to furnish conclusive evidence that equality has not been sought for, but avoided; that oppression, not justice, was desired, and confiscation, not taxation, intended?"

Cooley on Taxation, 128.

This appears to be one of the sort of cases the learned author had in mind.

It will be observed, on an examination of the act of March 6, 1893, that it is supplemental and amendatory of the act regulating taxation, approved March 6, 1891. The act of March 6, 1893, in terms applies to telegraph, telephone, palace car, sleeping car, drawing-room car, express and fast freight, joint stock association companies, copartnerships, and corporations transacting business in the State of Indiana, and to none other, while the act of March 6, 1891, covers all other corporations, copartnerships, and individuals and regulates the taxation of the same. By reference to section 11 of the amendatory act it will be found that there is imposed arbitrarily upon the class of corporations named in the supplemental act, in case of failure to pay the taxes on the day named in the original act, not only the same penalty which corporations, under the orig-

inal act, are required to pay, to wit, 10 or 16 per cent., depending upon the character of the delinquency, but there is also imposed, in addition to these penalties, a penalty of 50 per cent. upon the tax, plus the 10 or 16 per cent. Such is the construction of this statute by the supreme court of Indiana, and such have been the penalties imposed upon this plaintiff in error, of which it complains in this proceeding. The result is that while in this case there is a total liability against the plaintiff in error of about $76,000, taxes and penalties, the penalties alone amount to $31,090.09 of this sum, as stated *ante;* and of this sum of $31,090.09 only $5,748.86 would have been imposed upon a corporation or individual, under the law of 1891, guilty of precisely the same delinquencies of which the plaintiff in error in this case has been guilty. While it is undoubtedly competent for the State authorities to provide legitimate penalties to secure the prompt payment of revenues due the State, yet we insist it is not permissible for them to make arbitrary classifications and under such arbitrary classifications adopt rules which practically confiscate the property of one particular class of corporations which may fail to pay taxes on a particular day and leave other classes of corporations under the same general description and designation free from such penalties. It will be observed that railway companies, bridge companies, street railway companies, ferry companies, and all other corporations of like character sustaining similar relations to the public with those designated in the act of 1893 are wholly relieved from any obligation to pay such enormous penalties in case of delinquency or failure to pay their taxes on a specified day.

It may be urged, as it has been heretofore, that there is a particular reason why the class of corporations enumerated in the act of 1893 should be thus put under heavy bonds to pay promptly the amounts due the State, in that the ordinary methods of collection are not available to the officers

of the State. But surely this argument has no force when we consider that railway companies, ferry companies, street railway companies, and bridge companies have no greater claims to exemption from sequestration, execution, etc., than the corporations named in the amendatory act, and that the same methods would be necessary in their case as in the case of the corporations named in the act of 1893. In the case of The Western Union Telegraph Company against The Attorney General (125 U. S., 530) this Court very clearly indicated that, although an injunction against the operation of the telegraph lines would not be authorized in case of non-payment of taxes, yet there remain to the State all the ordinary ways of enforcing a judgment for taxes, to wit, execution, sequestration, and any other appropriate remedy in chancery. Certainly the same method which would enable the State to enforce payment of taxes from a railroad company or from a bridge company would be available to its officers as against a telegraph or telephone company. It is therefore a purely arbitrary classification which is adopted by this act, and one designed, in view of the litigation which has taken place, to punish any person who dared to question the right of the State in the courts to tax as provided in the act of 1893.

Again, the provision of the act of 1893, now under consideration, denies to the associations, copartnerships, and corporations named the equal protection of the laws, in that it authorizes, "in addition to other remedies provided by law for the collection of taxes," actions to be prosecuted by the attorney general of the State and judgments to be rendered against the person of the tax-payer belonging to the class named in the act for failure or refusal to pay any taxes assessed against it, while all other tax-payers are, by the laws of the State, protected against any such additional remedy. Certain members of a particular class of tax-payers (quasi-public corporations) are singled out from all others of that class, as well as from all other tax-payers,

and an "additional remedy" provided against them when they fail or refuse to pay any tax assessed against them.

2. "Due Process of Law." "The Law of the Land."—In view of what we have said and the authorities we have cited in discussing the question of "the equal protection of the laws" it would seem unnecessary for us to discuss this point at any considerable length. The guaranty of "due process of law" is found in the constitution of every State in the Union. The terms are not always the same, but the meaning is the same in every case. In some the words are "due process (or course) of law," in others "the law of the land," and again in others both forms of words are used. The provision of the fourteenth amendment to the Constitution of the United States is as follows: * * * "nor shall any State deprive any person of life, liberty, or property without due process of law."

The guaranty applies to legislative enactments as well as to judicial proceedings. (Cooley on Constitutional Limitations, 6th ed., 431.)

There are many definitions in the books of the meaning of the words "due process of law" and "the law of the land." A few will suffice here. Mr. Webster's definition, in the argument of the *Dartmouth College case*, has been quoted with approval probably oftener than any other. It is as follows:

"By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not, therefore, to be considered the law of the land."

One of the most accurate definitions is that of Mr. Justice Johnson in *Bank of Columbia vs. Okely*, 4 Wheat., 235–244:

"After volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled

down to this, that they were intended to secure the individual from the arbitrary exercise of the powers of Government unrestrained by the established principles of private rights and distributive justice."

Chief Justice Hemphill, of Texas, in *Janes vs. Reynolds*, 2 Tex., 250, defined the terms thus:

"The terms 'law of the land' * * * are now, in their most usual acceptation, regarded as general public laws, binding upon all the members of the community, under all circumstances, and not partial or private laws, affecting the rights of private individuals or classes of individuals."

In discussing the question as to what is "due process of law," Judge Cooley says (Constitutional Limitations, 6th edition, 434):

"The principles, then, upon which the process is based are to determine whether it is 'due process' or not, and not any considerations of mere form. Administrative and remedial process may be changed from time to time, but only with due regard to the landmarks established for the protection of the citizen. When the Government through its established agencies interferes with the title to one's property, or with his independent enjoyment of it, and its action is called in question as not in accordance with the law of the land, we are to test its validity by those principles of civil liberty and constitutional protection which have become established in our system of laws, and not generally by rules that pertain to forms of procedure merely. In judicial proceedings the law of the land requires a hearing before condemnation, and judgment before dispossession; but when property is appropriated by the Government to public uses, or the legislature interferes to give direction to its title through remedial statutes, different considerations from those which regard the controversies between man and man must prevail, different proceedings are required, and we have only to see whether the interference can be justified by the established rules applicable to the special case. Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of

law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

When section 11 of the act of 1893 is tested " by these principles of civil liberty and constitutional protection which have become established in our system of laws," it is plain that it cannot stand. These principles protect the citizen in the enjoyment of his person and property against special, partial, and class legislation. They protect him against *unequal* burdens and exactions of government. By these principles he is entitled to the enjoyment of the protection and blessings of government alike with all other citizens of the State, upon payment of his *proportion* of the burdens and exactions necessary to the maintenance of that government

We respectfully submit that the judgment of the supreme court of the State of Indiana should be reversed and the cause remanded with directions to grant plaintiff in error a new trial or sustain its motion to modify the judgment of the Marion circuit court by reducing it to the amount of the taxes and the 16 and 10 per cent. penalties thereon.

SAMUEL O. PICKENS,
Attorney for Plaintiff in Error.

WILLARD BROWN,
CHARLES W. WELLS,
Of Counsel.

DECEMBER 11, 1896.

165 U.S. 304

165 U.S. 304

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE WESTERN UNION TELEGRAPH COMPANY,
Plaintiff in Error,
vs.
THE STATE OF INDIANA,
Defendant in Error.

Case No.

Term No. 649.

ERROR TO THE SUPREME COURT OF INDIANA.

Brief for Defendant in Error.

WM. B. BURFORD, PRINTER, INDIANAPOLIS.

IN THE

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THE STATE OF INDIANA, *Defendant in Error.*	

ERROR TO THE SUPREME COURT OF INDIANA.

Brief for Defendant in Error.

STATEMENT OF THE CASE.

This is another branch of the controversy between the Western Union Telegraph Company and the State of Indiana over the telegraph tax law of 1893 and the various cases and steps that have been taken with reference to that law in the Courts are as follows:

1. In September, 1893, the plaintiff in error brought suit against the auditors and treasurers of the various counties in the State of Indiana, through or into which its lines extended, to enjoin the collection of the taxes assessed for the year 1893 on the ground that the act of 1893 was unconstitutional. This case was decided in favor of the validity of the law in the Marion Circuit Court, from which an appeal was taken to the Supreme Court of Indiana, where the judgment was affirmed as reported in 141 Ind. p. 281. A writ of error was granted from this court to the Supreme Court of Indiana to review that decision, and the judgment in that case was affirmed in the opinion reported in 163 U. S. 1.

2. At the conclusion of the session of the State Board of Tax Commissioners for the year 1894, a bill in equity was filed in the Circuit Court of the United States for the District of Indiana against John O. Henderson, as Auditor of the State of Indiana, to enjoin him from certifying to the auditors of the various counties the assessment made by the State Board of Tax Commissioners. Subsequently the term of office of Henderson having expired, and he having been succeeded as Auditor of State by Americus C. Daily, said Daily was substituted as defendant in that case and the cause continued as to him.

A demurrer to the bill was sustained and on an opinion reported in 68 Federal Reporter, at p. 588, wherein it was held that the act of 1893 was constitutional, the bill was dismissed for want

of equity. From this decree dismissing the bill an appeal was prayed and granted to the Supreme Court of the United States, where the case was docketed, being case No. 448 of this term of this court. This case was set down for argument, with other similar cases, following the cases set for the 7th of December. At the present writing we have been advised by counsel for the appellant in that case that they would not argue the case, but would dismiss the appeal, and we presume that has been done, but are not further informed on the subject.

3. Following the failure by the Western Union Telegraph Company, on the third Monday in April, 1894, to pay the taxes assessed for the year 1893, the taxes being permitted to go delinquent, the State of Indiana, the defendant in error here, on the 7th of May, 1894, filed its complaint in the Marion Circuit Court, under the provisions of Section 11 of the act of 1893, to recover the taxes for 1893, with the delinquencies and penalties chargeable under the statutes of the State of Indiana, including, among others, the penalty of 50 per centum, to be collected in the event of a suit by the prosecuting attorney of any county, or by the attorney-general of the state in the event of a suit to collect the taxes for several counties, and it is the action that was had in that case that is complained of here. We will go further into the details of that matter presently.

4. The taxes assessed for the year 1895 remaining unpaid and delinquent after the third

Monday in April, 1896, the State of Indiana brought another suit to collect these taxes. The answer in that case was filed several days after the decision by this Court in *Western Union Telegraph Company* v. *Taggart et al.*, 163 U. S. 1, in which the validity of the law was upheld. The plaintiff in error, however, still contending, notwithstanding that decision, that the act was unconstitutional, the cause was put at issue and judgment was rendered against it for the taxes of 1895, on the 2d day of July, 1896, from which an appeal was prayed to the Supreme Court, where the judgment of the Court below was affirmed on the 2d of December, 1896, by an opinion not yet reported in the Northeastern. As yet no writ of error has been applied for in that case, the statute of the State allowing sixty days for the filing of a petition for a rehearing. As soon, however, as that time has elapsed or the petition for a rehearing that may be filed has been disposed of, we presume that in accordance with its settled practice the Western Union will be again knocking at the door of this Court for a writ of error to review that judgment. It seems difficult to convince this plaintiff in error that with respect to it and its property the State of Indiana has any rights whatever except the right to appear and plead at the bar of this Court.

Returning to the particular proceedings had in this case now pending, we are not able at this writing to refer specifically to page and line of the

record, inasmuch as the plaintiff in error, for reasons that were undoubtedly satisfactory to it and its learned counsel, saw fit not to have the record printed, and we are, therefore, under the necessity of making references to the record and the assignments of error, seeking to present questions here, in a general way, without reference specifically to page and line of the transcript.

As I have said *supra*, on the 7th of May, 1894, the original complaint in this case was filed. No demurrer was interposed to the sufficiency of this complaint, but on the 12th of January, 1895, an answer was filed in one paragraph. That answer is quite elaborate and lengthy, covering probably thirty or forty printed pages independent of its exhibits, the exhibits including, among other things, a transcript of the old law for the assessment of telegraph companies and a copy of the entire law of March 6th, 1893, together with various returns and statements made by the plaintiff in error. The answer itself is nothing but a copy of the complaint that was filed in the first named case to enjoin the County auditors and treasurers with a change in the exordium and peroration so as to make it fill the office that it was designed to fill, viz.: answer in lieu of the complaint as originally drawn. Nothing further was done in this case until the 9th of May, 1895, when a demurrer was filed to this answer challenging its sufficiency. On the 14th of May, 1895, the Supreme Court of the State decided the Taggart case as reported in 141 Ind. *supra*, and on the 11th of June, 1895, the

Circuit Court sustained the demurrer to the answer, and at the same time, the time for the payment of the taxes for the year 1894 without penalty having expired, and the taxes having become delinquent, leave was granted, under the practice that obtains in Indiana, to file a supplemental complaint, and a supplemental complaint was thereupon filed asking judgment for the delinquent taxes for the year 1894. To this supplemental complaint on the 15th of June, 1895, a demurrer was filed and overruled on the 22d of June. On the 27th of June an answer was filed to the supplemental complaint which is an anomaly in pleading. It will be remembered that a demurrer had been sustained to the answer to the original complaint so that, as there was but one paragraph of answer, the original complaint stood unanswered, the demurrer taking that answer out of the case except for the purpose of appeal based upon the alleged error in sustaining the demurrer to it. Nevertheless, the answer to the supplemental complaint, treating the original answer as though it were in full force, is based upon that answer, the language being "adopts and makes a part hereof all the allegations of the answer to the complaint herein not specially relating to the assessment and collection of taxes for the year 1893, except as herein differently alleged."

As a rule, in all the relations of life, unless it be in pleading, where the foundation is withdrawn and no substitute provided in its stead, the superstructure must fall. We submit that the rule of

pleading is not different from the general rule that obtains, and there being no basis for the answer to the supplemental complaint, because of the fact that there was no answer pending to the original complaint, there was no error in sustaining the demurrer to it. That was the view taken of the pleading by the Supreme Court of the State, and upon the authority of that case and the reasoning in connection with it, we submit that the position is impregnable.

To this answer a demurrer was interposed and on the 3d of September, 1895, this demurrer was sustained; and on the 9th of September, there being no pleading on file contesting or in any manner controverting the averments of the complaint and of the supplemental complaint, the matters therein alleged were submitted to the Court for the assessment of damages, and there being no plea or proof of payment, judgment was rendered for $109,585.35. A motion for a new trial was filed and on the 2d of November, 1895, was overruled, and a motion was made to modify, in the respect named, the judgment as to the amount of the recovery, and it being conceded upon the showing then made to the Attorney-General of Indiana that there had been payments made sufficient to reduce the amount of the recovery, the judgment was reduced to $76,023.65 and the motion to modify in the other particular was overruled.

Meanwhile this Court, on the 18th day of May, 1896, had affirmed the Taggart case and had thus

upheld the validity of the act of 1893 in question by the opinion in 163 U. S. 1, and on the 2d of October, 1896, the Supreme Court of Indiana by an opinion reported in 44 N. E. 793, affirmed the judgment of the Marion Circuit Court, and it is this action that is complained of in this case, and to review it that the writ of error is sued out.

The assignment of error here seeks to present,

1. The unconstitutionality generally of the act of March 6, 1893.

2. That the Supreme Court of the State erred in holding that the act of March 6, 1893, provided and secured to the plaintiff in error "due process of law."

3 That the Court erred in holding that the act of March 6, 1893, does not "deny to the plaintiff in error the equal protection of the laws."

4. That the Court erred in holding that the act of March 6, 1893, did not violate the provisions of the Constitution prohibiting the imposition of a burden upon interstate commerce.

We submit that, by the very full and careful decision in the Taggart case, all the questions sought to be raised by these assignments of error, have been fully and completely disposed of, except provision of the act authorizing, in a suit by the attorney-general to collect the taxes, the judgment to include a penalty of fifty per centum, and it is thus claimed by the assignments of error that the plaintiff in error was denied the equal protection of the laws; and that we submit and insist is the sole question presented by this record.

It was maintained below, and may perhaps be insisted here, that because of the injunction that had been granted in the Taggart case, restraining the county officials from proceeding by distraint and sale, to collect the taxes, the State was in substance and in effect prohibited and enjoined from prosecuting this action as to the original complaint, and that, because of the temporary injunction granted by the United States Circuit Court pending the litigation in that Court, the State was in substance and in effect enjoined from prosecuting this action as to the supplemental complaint. As to these contentions, we submit

1. That they do not present a federal question.
2. That, even if they do, the contention is not well founded.

The question as to what remedies, if any, are afforded or provided by a state statute, and whether they are, in substance, identical with other provisions or in addition to other provisions of the statutes of the state, is a question of construction, and upon the construction of a state statute the decision by the highest court of the state is binding upon other courts.

> *Chicago, Milwaukee & St. Paul R'y Co.* v. *Minnesota*, 134 U. S. 418.

Whether such a construction is violative of any provision of the United States Constitution is a federal question, but what the statute requires is purely a question of the construction of a state law, and upon that question the decision of the

highest court of the state on writ of error to the Supreme Court of the United States is conclusive.

The suit in this case was by the state. If, in either the action in the Circuit Court of Marion County or the action in the Circuit Courts of the United States, the suits to restrain in the one case the county officers and in the other the Auditor of State from proceeding as they were forbidden to proceed in these actions, could be construed as actions against the State directly forbidding it to apply to the courts to enforce rights that it might see fit to apply to the courts for the enforcement of, then, in each and both of the cases, as to so much of the relief as it is claimed enjoins and forbids the State from proceeding, the actions and each of them would be *coram non judice*, for there is no provision in any statute or the Constitution in the State of Indiana conferring upon any state court jurisdiction to enjoin or restrain the state from proceeding in an action in the court to ask for relief, and the eleventh amendment to the United States Constitution specifically and in terms denies to the Circuit Courts such jurisdiction.

In re Ayers, 123 U. S. 443, where the action was not even in form against the State, but against the officer of the State as such, in discharge of the duty imposed upon him by statute. In other cases not necessary to consider in this connection, this Court has held that it would enjoin the particular officer of a State from the performance of particular duties imposed upon him by a statute which is held to

be unconstitutional; but we know of no adjudged case in which it has been held by this Court or by any court that the Circuit Court of the United States has jurisdiction in a suit by a citizen of another state to enjoin the State itself from the commission of any act. and, in the opinion of Judge Baker in the Daily case *supra*, it is carefully pointed out that he maintains jurisdiction because it is not a suit against the State. If, therefore, either of these actions had been against the State as such to enjoin it from enforcing the collection of these taxes by proceedings had in the courts, it goes without further argument that either court must have declined to entertain jurisdiction of the action, and it is a novel and extraordinary proposition that courts should, by construction, hold that something had been done by indirection which the Court unquestionably had no jurisdiction to accomplish directly.

Upon this subject we do not think it is necessary to add anything further to what has been said by the Supreme Court of Indiana upon this contention: if, indeed, this contention shall appear upon the argument of this case, as to which we are not advised by anything either in the record or out of it. There is, therefore, but the one remaining question, which we insist is the only question presented by this record, viz.: Is the provision contained in Section 11 of the act of March 6, 1893, authorizing, in a suit by the Attorney-General for the collection of taxes assessed against telegraph, telephone, express and sleeping-car companies,

the judgment to include an additional penalty of fifty per centum violative of that provision of the first section of the Fourteenth Amendment to the Constitution of the United States, which provides "nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."

It is not denied that the plaintiff in error was a person within the jurisdiction of the State of Indiana, and, therefore, that it comes within the language "any person within its jurisdiction." We insist that the provision in question does not deny to it the equal protection of the laws. No system of taxation, could, by possibility, deny to states the right of classification for purposes of taxation. There could be no complete, perfect or even tolerable system of taxation that did not authorize classification.

> *Home Ins. Co.* v. *New York*, 134 U. S. 606.
> *R. R. Co.* v. *Gibbes*, 142 U. S. 386.
> *Indiana Ry. Tax Cases*, 154 U. S. 421, 438–39.
> *Commonwealth* v. *Delaware Division Canal Co.*, 123 Pa. St. 594.

Undoubtedly the system of classification must not be an arbitrary one. In the state of Indiana properties are variously classified and different methods of assessment are provided in the act of 1891, to which this particular act is amendatory and supplementary.

1 Persons generally.
2. Associations for banking purposes not incorporated.
(Sec. 59; R. S. 1894, § 8469.)

3. The capital stock in banks incorporated, whether under the laws of the state or of the United States.

(Secs. 60 to 66, inclu-ive. §§ 8470, 8471, 8472, 8473, 8474, 8475 and 8476.)

NOTE. Sec. 65 makes provision for a special method of collecting taxes assessed upon the capital stock of the bank.

4. Insurance companies. (Sec. 67; § 8477.)

NOTE A special method is provided for the collection of the taxes from insurance companies:

a. By requiring the forfeiture of $100 per day for each day the report is withheld or payment delayed, to be recovered in an action;

b. By authority conferred upon the Auditor of State to revoke the authority to do business.

5. As to express companies. (Sec. 68; § 8480.)

NOTE. Provision is made for a forfeiture of $100 per day:

a. For failure to report, and to be recovered in an action;

b. And prohibition from carrying on business until the payment is made.

6. A similar provision as to telegraph companies. (Sec 69; § 8478.)

7. A similar provision as to telephone companies. (Sec. 70; § 8479.)

8. A similar provision as to sleeping-car companies. (Sec. 71; § 7481.)

NOTE. In addition to other remedies, railroad companies are prohibited from hauling cars of the sleeping-car companies while in default.

9. Substantially a similar provision as to bridge and ferry companies. (Sec. 72; § 8490.)

10. Street railroad, water works, gas, manufacturing and mining companies, etc., still a different provision. (Sec. 73; § 8491.)

NOTE. The provision in Sec. 73, for failure to make report. Secs. 73 to 75, inclusive.

11. Railroad companies. (Secs. 76 to 88, inclusive. §§ 8494, 8495, 8496, 8497, 8498, 8499, 8500, 8501, 8502, 8503, 8504 and 8506.

12. Building, loan fund and savings associations. (Sec. 89; § 8507.)

The question as to whether there is a difference between the properties of telegraph, telephone, sleeping-car and express companies having a unity of existence, ownership and operation in Indiana and in other states, and banks, mining, manufacturing and other local companies having a fixed locality and doing business from that locality, although in addition to that in other places, is too plain for argument. To a certain extent there is quite a close analogy between railroad companies and companies of the character named in the act of March 6, 1893, but even as to them there is a marked difference with respect to the possibility of the collection of taxes *in invitum* in the event it should be found necessary to collect the delinquent taxes by distraint from the railway company. There is in Indiana no power to levy or sell a portion of the roadbed or roadway of a railroad company.

Railway Co. v. *Boney*, 117 Ind. 501.

The same rule would apply to and prevent the levy upon and the collection of the taxes by the sale of the line of a telegraph or telephone company. If an attempt were made to levy upon sleeping-cars *in transitu* through or across the state while engaged in carrying on state or interstate commerce, the traveling public would be

very greatly discommoded if indeed such action should be permissible. In the case of railroad companies sufficient provision is made in the general statutes of the state by levy and sale of locomotives or cars subject to taxation not presently in use, for this might well be done without in anywise interfering in the discharge of the public duties cast upon a common carrier, leaving its duties to be performed by other cars and other locomotives. A portion of the line of a telegraph company could not clearly, under the Boney case, be levied upon and sold. If, however, the levy should be made upon the instruments or appliances engaged in the business of a common carrier of messages, the public duties of the telegraph company would be interfered with, and it would thereby be prevented from the discharge of its duties to the public and the general government, and this course could not be tolerated either directly or indirectly.

Western Union Telegraph Co. v. *Massachusetts*, 125 U. S., p. 554.

Nevertheless the taxes are to be collected, and to be collected *in invitum* if necessary. If, therefore, it is not proper that a state should levy and take into its possession, to the exclusion of the public, the line or the instruments with which telegraphing is carried on unless some provision is made whereby the collection of these taxes may be enforced through the processes of the courts, the State would be remediless in the premises and

powerless to collect its taxes except in the contingency that the company should see fit to voluntarily pay at its own sweet will, and the many appeals that have been taken and the delays that have been occasioned by this plaintiff in error in the various cases to which the attention of the court has been called show conclusively that if the state had no better way of collecting its taxes than by the voluntary payment by the company after it had been ascertained that the taxes were payable, it would be a long time before the State of Indiana would derive any revenue from this particular plaintiff in error.

The act in question applies equally to all persons, whether natural or artificial, and all properties of the same general character which are in the same condition.

Hymes v. *Aydelott*, 26 Ind. 434.
Boyer v. *Jones*, 14 Ind. 357.
Palmer v. *Stumph*, 29 Ind. 329.
Consumers Gas Co. v. *Harless et al.*, 131 Ind. 452.
State v. *Consolidated, etc., Co.*, 16 Nevada, 342.
McAurich v. *Mississippi, etc., Co.*, 20 Ia. 338.
Am. and Eng. Ency. of Law, vol. 25, pp. 302–304.

By Section 56 of the act of 1891, §8466 of the Revision of '94, the county auditor is required to add to the valuation made by the assessor fifty per cent., where the property holder has failed to

list or subscribe to oaths required, while by Section 75, §8493, R. S. 1894, in the case of manufacturing and mining, etc., companies, the auditor is required to add only twenty-five per cent.

The validity of Sec. 83 of the act of '52 in this respect substantially similar to Sec. 56 of the act of '91, was upheld by the Supreme Court in *Boyer* v. *Jones*, 14 Ind. 354. In *Hall* v. *DeCuir*, 95 U. S., it was said by Mr. Justice Clifford at p. 503: "Substantial equality is the law of the state and of the United States, but equality does not mean identity." Each of the companies respecting which provision is made by the act of 1893 for the collection of its taxes represents a peculiar class of property engaged as a common carrier and owing duties to the public, state and interstate, and any act of interference with its properties by distraint and sale (the ordinary method of collecting taxes), necessarily means an interference with public business and the public convenience. A county treasurer might levy upon and take into his possession a horse or a domestic animal, and while it might interfere sadly with the comfort and convenience of the particular family interested, the public, as such, would have no concern with or interest in it. It is possible that the General Assembly of Indiana might have found some other process equally as efficacious as the one provided by this act, but that is not at all the question presented by this record. The question and the sole question is, is the process provided

an unconstitutional one? It would seem an extraordinary notion that the right to apply to a court for the enforcement of a public right in the discharge of a public duty should be said to be an unconstitutional process. *In re Debs, Petitioner*, 158 U. S. 564.

If resort to the courts for necessary relief is to be given, the right to a reimbursement for the expense occasioned thereby is a necessary incident thereto, and the extent and character of the reimbursement is purely a matter of legislative discretion. Doubless the legislature might have provided that this penalty, instead of being 50 per cent., should be only 25, or 10, or even 5, but which of these sums should be fixed upon is necessarily a matter of which the legislature should be the judge, and its conclusion upon that should be final. Where the legislature has a right to exercise a legislative discretion, it would seem to be an extraordinary process of law that the courts would attempt to revise this discretion. If it should seem to the recusant taxpayer that the burden provided by the particular act whose validity he desires to question is too great to be borne, in this State of Indiana he has a simple and direct method of avoiding the burden by complying with the requirements of the particular statutes and paying his taxes under protest. If he supposes that the statute as a whole, or in any essential part, is unconstitutional, and, therefore, not binding on him, and he desires to test that question, a safe and proper method is afforded

him by paying his taxes under protest and suing to recover the illegal exaction. Ample provision is made by the first and second sections of the act of July 24, 1853, sections 7915 and 7916 of the Revision of 1894, under the first of which the board doing county business is required to refund from the county treasury the portion of the illegal exaction paid on account of the taxes of the county, and under the second of which the same board is required to ascertain the amount with respect to the state's portion of the taxes, and upon certificate of its action the auditor of state is required to audit the same as a claim against the treasury, and the treasurer of state is required to pay the same out of moneys not otherwise appropriated. It rests entirely with the tax-payer whether this penalty shall be exacted or not. It can not be exacted unless he is sued, and whether he shall be sued or not depends upon his conclusion whether or not he will pay as required by law.

The plaintiff in error in this case elected to choose its remedy, and in so doing has put the authorities of the state to delay, at this time covering nearly three years, and this record and the decisions in the various cases heretofore alluded to are witnesses—not mute—to the annoying vexations, expenses and troubles which it has placed upon the defendant in error and compelled its officers to submit to, and we respectfully submit that having elected to vex the authorities of the state by litigation piled upon litigation, it stands

now in no condition to ask for relief from the consequences that have followed as the result of its own deliberate acts.

The equal protection of the law was afforded it and no local or special law was passed regarding it or its property, for all property of the same character and under the same circumstances is placed by the act of 1893 under the same burden, no greater and no less.

Due process of law—the law of the land—was afforded it before any steps were taken to affect its property by suit or penalty. It challenged that law to a test of strength, and having learned in the hard lesson of experience that the law of the land was more powerful even than the Western Union Telegraph Company, it should now bow to it and no longer be heard on its false clamor.

We submit that no good cause has been shown why this writ of error should have been prosecuted. If in the exercise of a curiosity, whether laudable or not, we do not care to discuss, the plaintiff in error believing that its rights were infringed upon by the legislation in question saw fit to apply to the court for relief, that was its right; but when it exercised this right it, like all other citizens, exercised those rights subject to the burdens and all the burdens that the law thereby imposed upon it.

Abundant resting places have been afforded to it to reconsider its determination and retrace its steps. After the decision of the Backus cases in the Supreme Court of Indiana and before the

passage of the law, notice was served upon it that legislation of this character was proper. When the Backus cases were affirmed, in 154 U. S., substantially the contentions against the validity of the law were put at rest. When the Supreme Court of Indiana affirmed the Taggart case there was a time for sober and serious reflection. When that case was affirmed in this court the litigation should have ceased and the taxes should have been paid, but still, notwithstanding the repeated adjudications against it, and its insistent claim, it is again before this court asking to be relieved from the penalties that only accrued because of its continued contumacy, and with poor grace, we insist, it asks further consideration and consequent relief from this high court. There ought, it seems to me, at some time, to be an end to litigation. We believe that time was reached long since in the progress of this litigation, but if not we insist that now is the time when it should terminate, and we, therefore, earnestly urge that the judgment of the court may be affirmed.

Respectfully submitted,

WILLIAM A. KETCHAM.
Attorney-General of Indiana.

ALONZO GREENE SMITH,
MERRILL MOORES,
Of Counsel.

APPENDIX.

AN ACT supplementary to and amendatory of an act entitled "An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency," approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, dining car, express and fast freight, joint stock associations, companies, copartnerships and corporations transacting business in the State of Indiana, repealing sections 68, 69, 70 and 71 of said act and all laws in conflict therewith, and declaring an emergency.

[APPROVED MARCH 6, 1893.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That any joint stock association, company, copartnership or corporation, whether incorporated under the laws of this State or of any other State, or of any foreign nation, engaged in transmitting to, from, through, in or across the State of Indiana, telegraphic messages, shall be deemed and held to be a telegraph company, and every such telegraph company shall, annually, between the first day of April and the first day of June, make out and deliver to the Auditor of State a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding, and if such shares have no market value, then the actual value thereof.

Fifth The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State, and the location and assessed value thereof, in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situate outside theof Indiana, State

and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used and the sum at which the same is assessed for taxation in the locality where situated.

Seventh All mortgages upon the whole or any of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company.

(*b*) The total length of so much of their lines as is outside the State of Indiana.

(*c*) The length of the lines within each of the counties and townships within the State of Indiana.

SEC. 2. Every telephone company doing business in this State, whether incorporated under the laws of this State, or of any other State, or of any foreign nation, shall annually, between the first day of April and the first day of June, make out and deliver to the Auditor of State a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding, and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said asssociation, company, copartnership or corporation, and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situate outside the State of Indiana and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines of said association or company.

(*b*) The total length of so much of their lines as is outside the State of Indiana.

(*c*) The length of the lines within each of the counties and townships within the State of Indiana.

SEC. 3. Every joint stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other State, or any foreign nation engaged in conveying to, from, through, in or across this State, or any part thereof, money, packages, gold, silver, plate, merchandise, freight or other articles, under any contract, express or implied, with any railroad company, or the managers, lessees, agents or receivers thereof, provided such joint stock association, company, copartnership or corporation is not a railroad company, shall be deemed and held to be an express company within the meaning of this act, and every such express company shall annually, between the first day of April and the first day of June, make out and deliver to the Auditor of State a statement, verified by the oath of the officer or agent of such association, company, copartnership or corporation making such statement with reference to the first day of April next preceding, showing:

First. The total capital stock or capital of said association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding and the par or face value of each share, and, in case no shares of capital stock are issued, in what manner the capital thereof is divided and in what manner such holdings are evidenced.

Third. Its principal place of business.

Fourth. The market value of the said shares of stock on the first day of April next preceding, and if such shares have no market value, then the actual value thereof; and in case no shares of stock have been issued, state the market value, or the actual value in case there is no market value, of the capital thereof, and the manner in which the same is divided.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the improvements thereon, owned by said association, company, copartnership or corporation, situate outside the State of Indiana and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines or routes over which such association, company, copartnership or corporation transports such merchandise, freight or express matter.

(*b*) The total length of such lines or routes as are outside the State of Indiana.

(*c*) The length of such lines or routes within each of the counties and townships within the State of Indiana.

SEC. 4. Every joint stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other State, or of any foreign nation, and conveying to, from, through, in or across this State, or any part thereof, passengers or travelers in palace cars, drawing-room cars, sleeping cars, dining cars or chair cars, under any contract, express or implied, with any railroad company, or the managers, lessees, agents or receivers thereof, shall be deemed and held to be a sleeping-car company for the purposes of this act; and every such sleeping-car company doing business in this State shall, annually, between the first day of April and the first day of June, make out and deliver to the Auditor of State a statement, verified by the oath of the officers or agent of such company making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding, and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specified real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situate outside the State of Indiana, and not used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the franchises and amounts thereof.

Eighth. (a) The total length of the main lines of all the railroad companies over which said cars are run.

(*b*) The total length of so much of the main lines of the railroad companies over which said cars are run as is outside the State of Indiana.

(*c*) The length of the lines of said railroad companies over which said cars are run within each of the counties and townships within the State of Indiana: *Provided*, That where the railroads, over which said lines run, have double tracks, or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but a single track, and in case the Auditor of State shall require it, such statement shall show in detail the number of miles of each or any particular railroad system or division.

SEC. 5. Upon the filing of such statements the Auditor of State shall examine them, and each of them, and if he shall deem the same insufficient, or in case he shall deem that other information is requisite, he shall require such officer to make

such other and further statements as said Auditor of State may call for. In case of the failure or refusal of any association, company, copartnership or corporation to make out and deliver to the Auditor of State any statement or statements required by this act, such association, company, copartnership or corporation shall forfeit and pay to the State of Indiana one hundred ($100) dollars for each additional day such report is delayed beyond the first day of June, to be sued and recovered in any proper form of action in the name of the State of Indiana on the relation of the Auditor of State, and such penalty, when collected, shall be paid into the general fund of the State.

SEC. 6 Upon the meeting of the State Board of Tax Commissioners for the purpose of assessing railroad and other property, said Auditor of State shall lay such statements, with such information as may have been furnished him, before said Board of Tax Commissioners, who shall thereupon value and assess the property of each association, company, copartnership or corporation in the manner hereinafter set forth, after examining such statements and after ascertaining the value of such properties therefrom, and from such other information as they may have or obtain. For that purpose they may require the agents or officers of said association, company, copartnership or corporation to appear before them with such books, papers or statements as they may require, or they may require additional statements to be made to them, and may compel the attendance of witnesses, in case they shall deem it necessary, to enable them to ascertain the true cash value of such property.

SEC. 7. Said State Board of Tax Commissioners shall first ascertain the true cash value of the entire property owned by said association, company, copartnership or corporation from said statements or otherwise, for that purpose, taking the aggregate value of all the shares of capital stock, in case said shares have a market value, and in case they have none, taking the ac ual value thereof or of the capital of said association, company, copartnership or corporation, in whatever manner the same is divided, in case no shares of capital stock have been issued: *Provided, however,* That in case the whole, or any portion of the property of such association, company, copartnership or corpo-

ration shall be incumbered by a mortgage or mortgages, such Board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock or to the value of the capital, in case there shall be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, copartnership or corporation. Such Board of Tax Commissioners shall, for the purpose of ascertaining the true cash value of the property within the State of Indiana, next ascertain from such statements or otherwise, the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situate without the State of Indiana and not specifically used in the general business of such associations, companies, copartnerships or corporations, which said assessed values for taxation shall be by said Board deducted from the gross value of the property as above ascertained. Said State Board of Tax Commissioners shall next ascertain and assess the true cash value of the property of such associations, companies, copartnerships or corporations within the State of Indiana, by taking the proportion of the whole aggregate value of said associations, companies, copartnerships or corporations, as above ascertained, after deducting the assessed value of such real estate without the State, which the lengths of the lines of said associations, companies, copartnerships or corporations, in the case of telegraph and telephone companies within the State of Indiana, bears to the total length of the lines thereof; and in the case of palace, drawing-room, sleeping, dining or chair car companies, the proportion shall be the proportion of such aggregate value, after such deductions, which the length of the lines within the State, over which said cars are run, bears to the length of the whole lines over which said cars are run; and in the case of express companies, the proportion shall be the proportion of the whole aggregate value, after such deductions, which the length of the lines or routes, within the State of Indiana, bears to the whole length of the lines or routes of such associations, companies, copartnerships or corporations, and such amount, so ascertained, shall be deemed and held as the entire value of the property of said associations, companies, copartner-

ships or corporations within the State of Indiana. From the entire value of the property within the State so ascertained, there shall be deducted, by said Board, the assessed value for taxation of all the real estate, structures, machinery and appliances within the State and subject to local taxation in the counties and townships, as hereinbefore described in Item No. 5 of sections 1, 2, 3 and 4 of this act, and the residue of such value so ascertained, after deducting therefrom the assessed value of such local properties, shall be by said Board assessed to said association.

SEC. 8. Said State Board of Tax Commissioners shall thereupon ascertain the value per mile of the property within the State by dividing the total value, as above ascertained, after deducting the specific properties locally assessed within the State by the number of miles within the State, and the result shall be deemed and held as the value per mile of the property of such association, company, copartnership or corporation within the State of Indiana.

SEC. 9. Said State Board of Tax Commissioners shall thereupon for the purpose of determining what amount shall be assessed by it to said association, company, copartnership or corporation in each county in the State, through, across, into or over which the line of said association, company, copartnership or corporation extends, multiply the value per mile as above ascertained by the number of miles in each of such counties as reported in said statements, or as otherwise ascertained, and the result thereof shall be by said Board certified to the Auditor of State, who shall thereupon certify the same to the Auditors respectively of the several counties through, into, over or across which the lines or routes of said association, company, copartnership or corporation extend, and such Auditors shall apportion the amount certified for their counties respectively among the several townships into, through, over or across which such lines or routes extend in proportion to the length of the lines in such townships

SEC. 10. To enable said County Auditors to properly apportion the assessments between the several townships, they are authorized to require the agent of said association or company to

report to them respectively, under oath, the length of the lines in each township, and the Auditor shall thereupon add to the value so apportioned the assessed valuation of the real estate, structures, machinery, fixtures and appliances situated in any township, and extend the taxes thereon upon the duplicates as in other cases.

SEC. 11. In case any such association, copartnership or corporation as named in this supplemental and amendatory act shall fail or refuse to pay any taxes assessed against it in any county or township in the State, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the State of Indiana by the Prosecuting Attorneys of the different judicial circuits of the State, on the relation of the Auditors of the different counties of this State, and the judgment in said action shall include a penalty of fifty per cent of the amount of taxes so assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over or across which the line or route of any such association, copartnership, company or corporation shall extend, or in any county where such association, company, copartnership or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership or corporation shall have refused to pay the whole of the taxes assessed against the same by said State Board of Tax Commissioners, or in case such association, company, copartnership or corporation shall have refused to pay the taxes or any portion thereof assessed to it in any particular county or counties, township or townships, such action may include the whole or any portion of the taxes so unpaid in any county or counties, township or townships, but the Attorney-General may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions in each separate county or township, or join counties and townships, as he may prefer. All collection of taxes for or on account of any particular county made in any such suit or suits, shall be by said Auditor of State accounted for as a credit to the respective counties for or on account of which such collections were made by said Auditor of State, at

the next ensuing settlement with such county, but the penalty so collected shall be credited to the General Fund of the State; and upon such settlement being made, the Treasurers of the several counties shall, at their next settlements, enter credits upon the proper duplicates in their offices, and at the next settlement with such county report the amount so received by him in his settlement with the State, and proper entries shall be made with reference thereto: *Provided, however*, That in any such action the amount of the assessment fixed by said State Board of Tax Commissioners and apportioned to such county, or apportioned by the County Auditor to any particular township, shall not be controverted.

SEC. 12. Inasmuch as the provisions of this act are intended to take the place of sections 68, 69, 70 and 71 of the act entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved March 6, 1891, such sections and each of them and all other laws and parts of laws in conflict with this act are hereby repealed: *Provided*, That all moneys now due the State, or which may become due on the 1st day of April, 1893, or at any other time, on account of any assessment or charge made against any of the joint stock associations, persons, companies or corporations on account of per cent. on gross or net earnings for the preceding year or years, and all penalties and charges thereon growing out of any failure to make reports on payments as now required by the provisions of the aforesaid repealed sections shall be paid and collected under the provisions of said repealed sections the same as if said sections were not repealed, and any suit brought for the recovery of such money, taxes or penalties shall be begun under the provisions of said repealed sections and prosecuted to final judgment thereunder in all respects the same as if said sections were continued in full force; and it is hereby expressly provided that all the rights of the State accrued, or which may accrue on the 1st day of April, 1893, on account of receipts for the preceding years, are hereby saved from the operation of the aforesaid repealing clause.

SEC. 13. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in force from and after its passage.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE WESTERN UNION TELEGRAPH COMPANY,
Plaintiff in Error,
vs.
THE STATE OF INDIANA,
Defendant in Error.

Case No.—
Term No. 649.

PETITION FOR ADVANCEMENT.

WM. B. BURFORD, PRINTER, INDIANAPOLIS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE WESTERN UNION TELEGRAPH COMPANY, *Plaintiff in Error,*	Case No.—
vs.	
THE STATE OF INDIANA, *Defendant in Error.*	Term No.

PETITION FOR ADVANCEMENT.

The said State of Indiana shows the Court that it is the defendant in error in the above entitled cause, and that the execution of the revenue laws of the State of Indiana is enjoined and stayed by virtue of the pendency of the writ of error herein, and that by reason thereof the State is prevented from collecting from said plaintiff in error the taxes due to the defendant in error under the judgments rendered in the Court below.

And said petitioner further shows the Court that there are now pending in this Court the following entitled causes, to wit:

The American Express Co., plaintiff in error, *v.* The State of Indiana, defendant in error. Term No. 469.

The Adams Express Co., plaintiff in error, *v.* The State of Indiana, defendant in error. Term No. 470.

The United States Express Co., plaintiff in error, *v.* The State of Indiana, defendant in error. Term No. 471; and

The Western Union Telegraph Co., plaintiff in error, *v.* Americus C. Daily, defendant in error. Term No. 448.

That all of said causes have been advanced and set for hearing by this Court on the first Monday in December, 1896, following the cases set for hearing on that day. That each and every of said cases, and the case herein, arise under and question the validity of the act of March 6, 1893, touching the assessment for taxation of telegraph, telephone, sleeping-car and express companies, and while the single question presented in this case, to wit, the right of the State to exact the penalty provided for in Section 11 of said act, is not necessarily involved in either of the other cases, its determination is so closely allied and connected with the others that all of said cases can be advantageously heard together, and that it will subserve the convenience of this Court and also of

the counsel engaged in said causes, that this cause should be advanced and set down for argument at the same time or immediately following the time set for the hearing of the above-enumerated causes, so that all of the cases now pending in this court, involving the constitutionality of the said act of March 6, 1893, may be argued and determined at the same time.

Wherefore said petitioner prays an order advancing said cause, and setting the same down for hearing, in common with the other causes above-named or immediately following them, and for such other and further orders in the premises as may to the Court seem just and meet.

WILLIAM A. KETCHAM,
Attorney-General of Indiana.

ALONZO GREENE SMITH,
LEON O. BAILEY,
MERRILL MOORES,
Of Counsel.